FILE COPY

MAR 26 1937

CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1936

No. 731

THE NATIONAL FERTILIZER ASSOCIATION, INC. ET AL., APPELLANTS,

versus

W. W. BRADLEY, INDIVIDUALLY AND AS CHAIRMAN OF THE BOARD OF TRUSTEES OF CLEMSON AGRICULTURAL COLLEGE ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA

BRIEF FOR W. W. BRADLEY, ETC. ET AL., APPELLEES

JOHN M. DANIEL,
Attorney General,
J. IVEY HUMPHREY,
Assistant Attorney General,
M. J. HOUGH,
Assistant Attorney General,
HAROLD MAJOR,
WILLIAM C. WOLFE,
Solicitors for Appellees.

THE R. L. BRYAN CO., COLUMBIA, S. C.
3-24-37-100

Supreme Court of the United States

OCTOBER TERM, 1936

No. 731

THE NATIONAL FERTILIZER ASSOCIATION, INC. ET AL., APPELLANTS,

versus

W. W. BRADLEY, INDIVIDUALLY AND AS CHAIRMAN OF THE BOARD OF TRUSTEES OF CLEMSON AGRICULTURAL COLLEGE ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA

BRIEF FOR W. W. BRADLEY, ETC. ET AL., APPELLEES

JOHN M. DANIEL,
Attorney General,
J. IVEY HUMPHREY,
Assistant Attorney General,
M. J. HOUGH,
Assistant Attorney General,
HAROLD MAJOR,
WILLIAM C. WOLFE,
Solicitors for Appellees.

INDEX

PAGE

Statement of Case 1

Statement of Issues 6

Opinion of Court Below Printed 9

Summary of Argument:

1. Compliance with Amendment not unreasonable 12
2. Amendment does not destroy value of manufactured fertilizers 12
3. Amendment does not destroy property rights of Appellants by compelling disclosure of their secret formulas 13
4. Amendment is reasonable and necessary 19
5. The Amendment is enforceable 22

Conclusion 23

APPENDICES

Appendix A:

Act of 1936, including "Open Formula" Amendment 25

Appendix B:

Opinion of Court Below 28

Appendix C:

Findings of Fact in Court Below 45

Appendix D:

Conclusions of Law in Court Below 66

TABLE OF CITATIONS OF STATUTES AND DECISIONS

Statutes of South Carolina:

PAGE

Code of Laws of South Carolina, 1932, Vol. III, Sec. 6366 and 6367 ..... 6, 9

Act of 1936, South Carolina, page 1400, printed as Appendix A 9

Act of 1933, South Carolina, page 292 2

Text authority:

6. R. C. L. pp. 78, 193-195 ..... 10, 15

Decisions:

Presser v. Illinois, 116 U. S. 252; 6 Sup. Ct. Rep. 580 10

Phelps v. United States, 274 U. S. 341; 47 Sup. Ct. Rep. 64 10

Bauman v. Ross, 167 U. S. 548; 17 Sup. Ct. Rep. 966 10

United States v. Coombs, 12 Pet. 72 10

The Abby Dodge, 223 U. S. 166; 32 Sup. Ct. Rep. 310 10

United States v. Standard Brewery, 251 U. S. 210; 40 Sup. Ct. Rep. 139 10

South Utah Mines & Smelters v. Beaver County, 262 U. S. 325; 43 Sup. Ct. Rep. 577..... 10

Lindsley v. Natural Carbonic Gas Co., 162 Fed. 954; 221 U. S. 61; 31 Sup. Ct. Rep. 337; 55 L. Ed. 369 10

St. L. Southwestern R. Co. v. Arkansas, 35; Sup. Ct. Rep. 99 11

Plymouth Coal Co. v. Pennsylvania, 232 U. S. 531; 34 Sup. Ct. Rep. 359 11

Fox v. Washington, 236 U. S. 273; 35 Sup. Ct. Rep. 383; 59 L. Ed. 573 11

Graves v. Minn., 272 U. S. 425; 47 Sup. Ct. Rep. 122 ..11, 21

N. Y., Ex Rel. Silz v. Hesterberg, 211 U. S. 31; 29 Sup Ct. Rep. 10; 53 L. Ed. 75 .....12, 21

Holden v. Hardy, 169 U. S. 366; 18 Sup. Ct. Rep. 383; 42 L. Ed. 780 .....12, 22

Purity Extract & Tonic Co. v. Lynch, 226 U. S. 192; 33 Sup. Ct. Rep. 44; 57 L. Ed. 184 .....12, 22

Erie Railroad Co. v. Williams, 233 U. S. 685; 34 Sup. Ct. Rep. 761; 58 L. Ed. 1155 .....15, 21

TABLE OF CITATIONS OF STATUTES AND DECISIONS
(Continued)

PAGE

L'Hote v. New Orleans, 177 U. S. 587; 20 Sup. Ct. Rep. 788; 44 L. Ed. 899 ..... 15, 21
Gundling v. Chicago, 177 U. S. 183; 44 L. Ed. 725 16
McLean v. Ark., 211 U. S. 550; 55 L. Ed. 320 16
Mathias Schmidinger v. City of Chicago, 226 U. S. 578 16
Patapsco Guano Co. v. Board of Agriculture for N. C. et al., 171 U. S. 345; 43 L. Ed. 191 16
Savage v. Jones, 225 U. S. 503; 56 L. Ed. 1182 17
Corn Products Refining Co. v. Eddy et al., 249 U. S. 427; 63 L. Ed. 689 17
Heath & M. Mfg. Co. v. Worst, 207 U. S. 338, 353; 52 L. Ed. 236, 243; 28 Sup. Ct. Rep. 114 18
Savage v. Jones, 225 U. S. 501, 524; 56 L. Ed. 1182, 1191; 32 Sup. Ct. Rep. 715 18
Standard Stock Food Co. v. Wright, 225 U. S. 540, 548, 549; 56 L. Ed., 1197, 1200, 1201; 32 Sup. Ct. Rep. 784 18
Schmidinger v. Chicago, 226 U. S. 578, 588; 57 L. Ed. 364, 368; 33 Sup. Ct. Rep. 182, Ann. Cas. 1914-B, 284 18
Armour & Co. v. North Dakota, 240 U. S. 510, 514, 515; 60 L. Ed. 771, 775; 36 Sup. Ct. Rep. 440, Ann. Cas. 1916-D, 548 18
Hutchinson Ice Cream Co. v. Iowa, 242 U. S. 153, 159; 61 L. Ed. 217, 221; 37 Sup. Ct. Rep. 28, Ann. Cas. 1917-B, 643 18
Hebe Co. v. Shaw, 248 U. S. 297, 303, ante, 255, 258; 39 Sup. Ct. Rep. 125 18
Amos Bird Co. v. Thompson, 274 Fed. 706 18
Sligh v. Kirkwood, 237 U. S. 52; 59 L. Ed. 835 18
Pan Handle Eastern Pipe Line Co. v. State Highway Commission, 294 U. S. 613; 55 S. Ct. 563; 79 L. Ed. 1090 . 22
Sproles v. Binford, 286 U. S. 374; 76 L. Ed. 1167 22
Frost v. Corporation Commission, 278 U. S. 518; 73 L. Ed. 483 22

STATEMENT OF THE CASE

Agriculture is the chief industry of the State of South Carolina. The census in 1930 showed that most of the adults in the State were engaged in farming and derived their chief support from agriculture (Record, 145).

In South Carolina there are 165,000 farmers—not rural population—but farmers, which include share-croppers, tenants, wage-hands and the landowners (Record, 91).

Every farmer in South Carolina uses fertilizer to some extent, and fertilizer is of vital importance to every one of them. Almost without exception the living and welfare of every farmer in that State is affected by fertilizer, because practically every one of them who grow any cash crop use fertilizers (Record, 91).

Realizing the magnitude of the fertilizer industry and the opportunity afforded the unscrupulous manufacturer to deal unfairly, the Legislature of South Carolina long ago undertook to regulate the manufacture and sale of commercial fertilizers used by the farmers within her bounds.

From time to time such regulatory Statutes were amended to the end that both the honest manufacturer and the consuming farmer could be adequately protected against unfair dealing and fraudulent practices.

Clemson Agricultural College was established by the Legislature of South Carolina about 1890, and soon thereafter the inspection of commercial fertilizers, and the enforcement of the regulatory fertilizer laws, were committed to the trustees of that College, so that such trustees thereafter, and now, administer and enforce such laws, including what is commonly called the "Open Formula" Statute of 1936, assailed in this case. The regulatory fertilizer laws of South Carolina are codified in Secs. 6363 to 6385, inclusive, in Vol. III of the Code of Laws of South Carolina, 1932.

It is generally conceded that the regulatory fertilizer laws of South Carolina, whose enforcement has been committed by statutory enactment to the Board of Trustees of Clemson College, have been fairly and impartially administered in the past (Record, 150).

The fertilizer laws of this State contain the following provision or regulation:

"Every person or corporation, before selling or offering for sale in this State any commercial fertilizer or fertilizing material shall brand on each bag or package the brand name of the fertilizer, the weight of the package, the name and address of the manufacturer, and the minimum percentage only guaranteed to be present of available phosphoric acid, of nitrogen (ammonia equivalent), and of potash soluble in water. The items shall be printed on the package in the following order:

"Weight of each package.

Brand name or trade-mark.

Guaranteed analysis:

Available phosphoric acid ..... per cent.
Ammonia equivalent of nitrogen ..... per cent.
Potash soluble in water ..... per cent.
Name and address of the manufacturer....." (Code of Laws of South Carolina, Vol. III, Sec. 6366).

After the codification of the laws of South Carolina in 1932, as required by its Constitution, that section of the fertilizer laws of the State contained in such codification as Sec. 6367 (Code of Laws of South Carolina, Vol. III, Sec. 6367) was stricken out by the Act of the Legislature in 1933 (Stats. at Large, XXXVIII, No. 232, page 292), and a new Section 6367 enacted in lieu thereof as follows:

"Section 6367: That the materials used in the manufacture and mixing of all fertilizers supplying nitrogen or ammonia, and offered for sale in this State, shall be divided into two classes, namely, water-soluble and available water-insoluble; and the percentage of nitrogen or ammonia coming from either of these two classes shall be guaranteed, but allowing a variability of one-fourth of one per cent. for goods containing two per cent. of ammonia or under, and a variability of one-third of one per cent. for goods containing two and three per cent. ammonia, and a variability of one-half of one per cent. for goods containing over three per cent. ammonia, and

the several materials in each of these two classes shall be named on the bag or on a tag attached thereto, and it shall be permissible for the manufacturer to substitute one or more materials in either class of approximately equal agricultural value for other materials of the same class: Provided, That where there is a contract of agreement between a manufacturer and a purchaser of fertilizer that the fertilizer will be manufactured by the use of certain definite sources and amounts of ammonia and potash, the fertilizer must be manufactured from these materials without the substitution of other materials and failure on the part of the manufacturer to comply with this requirement shall render the manufacturer liable to the purchaser for damages as it is now prescribed by law, and in addition thereto the manufacturer shall pay to the purchaser a penalty equal to one-fourth of the purchase price of such fertilizer".

Thus, it is seen by reference to the above-quoted fertilizer Statutes in force in South Carolina, that the law prior to 1936 only required a statement from the manufacturer of fertilizer as to the percentage and source of the ingredients used in the manufacture of fertilizer sold and distributed to the farmer, but did not require any statement as to the "poundage" of the ingredients used.

For several years prior to 1936, the farmers had made a concerted effort to have the aforesaid Sec. 6367 (as enacted by the Legislature in 1933) amended so as to require the manufacturers of fertilizer to furnish and state upon the tags attached to each bag or sack not only the percentage and source of the nitrogen, the potash and the phosphoric acid, but to also state the "poundage" from the particular source designated (Record, 30-33, 35-36, 154).

Finally, and after much discussion, the Legislature amended the aforesaid Sec. 6367 (as enacted by the Legislature in 1933) by including therein such provisions as the farmers of the State had long been endeavoring to get (Acts of South Carolina, 1936, No. 728, page 1400); and the Sec. 6367 as amended by the Acts of 1936 now reads as follows:

"Section 6367: (a) That the materials used in the manufacture and mixing of all fertilizers supplying nitrogen or ammonia, and offered for sale in this State, shall be divided into two classes, namely, water-soluble and available water-insoluble; and the percentage of nitrogen or ammonia coming from either of these two classes shall be guaranteed, but allowing a variability of one-fourth of one per cent. for goods containing two per cent. of ammonia or under, and a variability of one-third of one per cent. for goods containing two and three per cent. ammonia, and a variability of one-half of one per cent. for goods containing over three per cent. ammonia, and the several materials in each of these two classes shall be named on the bag or on a tag attached thereto, and it shall be permissible for the manufacturer to substitute one or more materials in either class of approximately equal agricultural value for other materials of the same class: Provided, That where there is a contract of agreement between a manufacturer and a purchaser of fertilizer that the fertilizer will be manufactured by the use of certain definite sources and amounts of ammonia and potash, the fertilizer must be manufactured from these materials without substitution of other materials and failure on the part of the manufacturer to comply with this requirement shall render the manufacturer liable to the purchaser for damages as it is now prescribed by law, and in addition thereto the manufacturer shall pay to the purchaser a penalty equal to one-fourth of the purchase price of such fertilizer.

'(b) That the amount and analysis of each material, or source, of each plant food element used in manufacture, of a fertilizer mixture containing two or more plant food elements be stated on a tag attached to each sack or container, such amounts of materials to be stated in pounds per hundred pounds of mixture contained in the sack or other container. This statement of pounds of materials used in the manufacture, of a fertilizer mixture shall be in addition to the statement of chemical analysis as required by Section No. 6366 of the Code of Laws of South Carolina, 1932' " (Stats. at Large, XXXIX, page 1400).

The foregoing sub-section "b" added to Sec. 6367, as enacted by the Legislature of South Carolina in 1933, now constitutes what is commonly known as the "Open Formula" Amendment to that section of the fertilizer laws of that State.

The Act of 1933, which now constitutes Sec. 6367 of the fertilizer laws of South Carolina, together with the so-called "Open Formula" Amendment thereto, is printed in full, including the title of the Act, as Appendix A at the conclusion of this argument.

The Board of Trustees of Clemson College, who are the enforcing officers in respect to the fertilizer laws of South Carolina, including the "Open Formula" Amendment, have not formulated or promulgated any rules or instructions regarding the enforcement of the "Open Formula" Amendment (Record, 150); nor has the "Open Formula" Amendment been construed by the Supreme Court of South Carolina (Record, 153).

The manufacture and sale of fertilizers is seasonal, so that any rules or regulations respecting compliance with the "Open Formula" Amendment will not become practically applicable and enforceable until the Fall of 1937, when the farmers commence to buy fertilizers for the next year's crop.

In this situation, a number of interested fertilizer companies filed their bill of complaint in the United States District Court for the Western District of South Carolina, on July 22nd, 1936, so that the fertilizer companies have had abundant time in which to arrange to comply with the "Open Formula" Amendment in respect to the future manufacture and sale of fertilizers to the farmers.

After a full hearing of the case a three-Judge Court sitting at Greenville, South Carolina, in the Western District of South Carolina, has filed an opinion denying a permanent injunction restraining the enforcing officers of South Carolina from carrying out the provisions of the "Open Formula" Amendment; and the complainants now bring the case to this Court on appeal pursuant to the provisions of Title 28, Sec. 380, U. S. Code Annotated.

QUESTIONS INVOLVED

In their bill of complaint the appellant-complainants (Record, 9-10) assail the "Open Formula" Statute enacted by the Legislature of the State of South Carolina in 1936 upon the following grounds:

1. That such Act (by way of amendment to Sec. 6367, Code of Laws of South Carolina, 1932, as amended by Act 232 of the Acts of the General Assembly of South Carolina, 1932), is invalid as "an unlawful, unreasonable, and unconstitutional exercise of the police power of the State of South Carolina in that no such law is in force and effect in any of the States of the United States, and no such law is necessary or required for the protection of users of fertilizers, but would serve merely to satisfy curiosity, while at the same time completely and irreparably destroying the value of the herein alleged formulas of plaintiff manufacturers not only in the State of South Carolina, but in all the other states in which plaintiff manufacturers, or any of them, sell their fertilizers".

2. "That the enforcement of said amendment would constitute a taking of plaintiff manufacturers' property and property rights without due process of law, and without compensation, and deny to them the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States and similar provisions of the Constitution of South Carolina, the provisions of which plaintiffs specially set up and claim the protection of, . . ."

In the opinion filed by the Court of First Instance (Record, 148-149) that Court has seen fit to phrase the contentions of appellants as to the invalidity of the Statute in question in the following language:

"I

That the statute, couched in indefinite and inaccurate language, is incapable of reasonable enforcement. That the only honest enforcement on the part of the enforcing agencies will amount to unreasonable and arbitrary taking of plaintiffs' property and so harm their businesses as to confiscate and

destroy them. Stated in other words, that honest compliance on the part of the companies with the terms of the statute will be so expensive as to destroy the plaintiffs' businesses in violation of their constitutional rights.

II

The second constitutional question, as we view it, is closely akin to the first one and dependent upon the decision of the first question for a correct understanding thereof. It is briefly that the statute, even if susceptible of a reasonable interpretation by enforcing agencies, and even if susceptible of compliance by the plaintiff companies, nevertheless amounts to an unlawful, unreasonable and unconstitutional exercise of the police power of the State of South Carolina. That the statute has no foundation in the necessities of the purchasing farmers and will not tend in any reasaonable way to satisfy an existing need, but only serve to satisfy curiosity on the part of the farmers.

We say again that the decision on this constitutional question depends largely upon our decision on the first constitutional question presented; namely, upon the interpretation of the statute.

III

That the statute when enforced will deprive the companies of the value of certain property rights which they have by reason of the value of secret formulae and trade-marks which they have built up by years of experience and at an enormous expense. That this destruction of property values is *not* necessary to meet any existing needs of the farmers of the State, is without compensation, is arbitrary and unreasonable and amounts to the taking of property without due process of law and denies to the plaintiffs the equal protection of the law; all in violation of the Fourteenth Amendment to the Constitution of the United States and similar provisions of the Constitution of South Carolina.

IV

A final contention is made by the plaintiffs that the Statute is unconstitutional because it makes no provision for the disposition of existing stocks of fertilizer on hand in South Carolina and with respect to which compliance with the new Statute is practically an impossibility. That this destruction of the value of these existing stocks is the taking of property without due process of law, is unreasonable and arbitrary, and being a taking without compensation is in violation of the Fourteenth Amendment to the Federal Constitution".

Otherwise expressed, the appellants contend that the so-called "Open Formula" Amendment is violative of the Fourteenth Amendment to the Federal Constitution in that:

(a) Compliance with the amendment would be so expensive as to be unreasonable to such a degree that they would be deprived of their property without due process of law.

(b) The amendment would destroy the salability and value of fertilizer manufactured and on hand prior to its enactment, thus depriving them of their property without due process of law.

(c) The amendment would destroy appellants' property rights in their secret formulas in manufacturing their fertilizers, thus depriving them of their property without due process of law.

(d) The amendment is an unreasonable exercise of the police power of the State, in that there is no necessity for such law.

(e) The amendment is unenforceable, and hence invalid.

On the other hand, the defendant-appellees contend that there is no merit in the contentions of the appellants, and that the amendment is a valid exercise of legislative power.

OPINION OF THE COURT BELOW

For convenience in the examination of our Brief, the Opinion of the Court below, together with its Findings of Fact and Conclusions of Law, is printed herein at the conclusion of the argument as Appendices B, C, and D, respectively.

SUMMARY OF ARGUMENT

So much of the Statute (Acts of South Carolina, 1936, No. 728, page 1400, and printed herein as Appendix A) amending Section 6367, Code of Laws of South Carolina, Vol. III, 1932, as is pertinent to this case, reads as follows:

"(b) That the amount and analysis of each material, or source, of each plant food element used in manufacture, of a fertilizer mixture containing two or more plant food elements be stated on a tag attached to each sack or container, such amounts of materials to be stated in pounds per hundred pounds of mixture contained in the sack or other container. This statement of pounds of materials used in the manufacture of a fertilizer mixture shall be in addition to the statement of chemical analysis as required by Section No. 6366 of the Code of Laws of South Carolina, 1932."

The effect of this Statute is to require the manufacturers of mixed fertilizer to attach a tag to each sack or container, and to have printed thereon the amount of each material or ingredient, in pounds per hundred, entering into the plant food element, together with an analysis of each, in terms of the plant food element.

We respectfully submit that the Statute under consideration is an exercise of the police power of the State.

The Appellants assail this Statute popularly spoken of as the "Open Formula" Amendment, as stated in their Brief, upon the ground that such Statute is beyond or in excess of the police powers of the State, and thus violative of the due process clause in the Fourteenth Amendment, because (a) compliance with the amendment would be so expensive as to be unreasonable, (b) the amendment destroys the salability and value of

the fertilizers manufactured prior to its enactment, (c) the amendment would destroy the property rights of Appellants in their secret formulas used in manufacturing their fertilizers, (d) the amendment is an unreasonable and unnecessary exercise of the police power, (e) the amendment is unenforceable.

It is elementary that when the validity of a Statute is assailed it is presumed to be valid until its invalidity appears beyond any reasonable doubt; and where there are two possible interpretations, one sustaining the Statute and the other nullifying it, the Court will adopt the construction which would uphold it.

6 R. C. L. page 78; and cases cited.

In respect to the construction of a Statute assailed as violative of some constitutional limitation, the rule of construction is generally stated as follows:

"The statute must be construed if fairly possible so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts on that score. In other words, in testing the constitutionality of a statute, the language must receive such construction as will render it constitutional, if it is reasonably susceptible of such interpretation."

Otherwise stated: "When the constitutionality of a statute is questioned, it is the duty of the Courts, and also a rule of construction to adopt such construction as will make the statute constitutional if its language will permit".

Presser v. Illinois, 116 U. S. 252; 6 Sup. Ct. Rep. 580;

Phelps v. United States, 274 U. S. 341; 47 Sup. Ct. Rep. 64;

Bauman v. Ross, 167 U. S. 548; 17 Sup. Ct. Rep. 966;

United States v. Coombs, 12 Pet. 72; The Abby Dodge, 223 U. S. 166; 32 Sup. Ct. Rep. 310;

United States v. Standard Brewery, 251 U. S. 210; 40 Sup. Ct. Rep. 139;

South Utah Mines & Smelters v. Beaver County; 262 U. S. 325; 43 Sup. Ct. Rep. 577;

Lindsley v. Natural Carbonic Gas Co., 162 Fed. 954; 221 U. S. 61; 31 Sup. Ct. Rep. 337; 55 L. Ed. 369;

St. L. Southwestern R. Co. v. Arkansas, 35 Sup. Ct. Rep. 99.

The rule of construction also has an extension, the Court is under the duty not only to presume that the statute is constitutional but also to presume that enforcing agencies will give the statute a reasonable and constitutional interpretation.

Plymouth Coal Co. v. Pennsylvania, 232 U. S. 531; 34 Sup. Ct. Rep. 359;

Fox v. Washington, 236 U. S. 273; 35 Sup. Ct. Rep. 383; 59 L. Ed. 573.

The Appellants complain of the statute upon the ground that there are no laws of a similar nature in other States. Conceding that there are no laws in any other of the States of the United States, similar to the statute in question, affords no reason for invalidating this statute. It may be that conditions in other States do not warrant a regulating of this kind, or they may have laws which affect the same purpose. At any rate, the constitutionality of this statute cannot be determined by what other States have done, or failed to do. It is presumed that the Legislature acted in good faith after making a thorough study as to the necessity of the statute and carefully weighing the benefits and inconveniences against each other. The Record shows that Bills embodying similar provisions had been brought before the Legislature of South Carolina numbers of times over a period of years, in which the fertilizer interest, as well as the farmers have discussed all questions pro and con. When this particular statute was before the Legislature, the merits were fully discussed before the members of the Agricultural Committees of the House and Senate and upon the floor of the Senate (R. 29 and 138). With all available information before it, the Act became a law, and as the authorities hold—the Court will not pass upon the wisdom of the Act, nor substitute its judgment for that of the Legislature. It will only interfere when the statute is clearly arbitrary and unreasonable in its scope and nature.

Graves v. Minn., 272 U. S. 425; 47 Sup. Ct. Rep. 122;

N. Y., Ex Rel. Silz v. Hesterberg, 211 U. S. 31; 29 Sup. Ct. Rep. 10; 53 L. Ed. 75;
Holden v. Hardy, 169 U. S. 366; 18 Sup. Ct. Rep. 383; 42 L. Ed. 780;
Purity Extract & Tonic Co. v. Lynch, 226 U. S., 192; 33 Sup. Ct. Rep. 44; 57 L. Ed. 184.

1.

In respect to the contention of the appellants, that compliance with the amendment would be so expensive as to be unreasonable, the record shows that no, or practically no additional machinery or instrumentalities will be needed to comply with the "Open Formula" amendment in manufacturing fertilizers.

Fertilizers are mixed in large piles on concrete floors with wooden or metal siding and covering, the several ingredients being dumped in a mechanical mixer and the mixing process being completed, the mixed product is carried in mechanical conveyors under the sheds and dumped from overhead on large piles, which are conical in shape; and later, after several weeks of curing in such piles, the mixed mass is broken up and run through a grinding machine, and put into burlap sacks usually containing two hundred pounds each, and thence distributed to the farmers.

Under the "Open Formula" amendment this process would not be changed or disturbed, but on the sack or tag would be printed, not only the names and the analysis of the ingredients contained in the respective mixtures, but a statement of the source and "poundage" of the ingredients used per hundred pounds. It is true, that there would have to be a little more printing on the sacks and on the tags; but we respectfully submit that this could not be said to be so expensive as to be unreasonable.

2.

The second contention of the Appellants, that the amendment destroys the salability and value of the fertilizers man-

ufactured prior to its enactment, is without merit in view of the fact that the fertilizer business is seasonal and that the "Open Formula" Amendment has not been thus far enforced. All fertilizers manufactured for the fertilizer season of 1936-1937 have, or will have been, sold and disposed of before the determination of this case.

In other words, if this amendment be held valid compliance therewith will not be enforced as a practical matter until next Fall when the fertilizer season for 1937-1938 opens; so that this contention of the Appellants becomes academic.

3.

The third contention of the Appellants, that the Amendment would destroy their property rights in their secret formulas used in manufacturing fertilizers, is, we respectfully submit, also without merit.

This phase of the case is, we believe, fairly and logically answered and disposed of in the opinion of the Court below in the following language (R. 155-156):

"What about property rights in the shape of secret formulae and trade names, and their destruction by the Statute? To begin with, it is doubtful whether these secret formulae and trade names belong personally to the plaintiffs. These secret formulae used by the plaintiffs have been so largely contributed to by the experience of the farmers themselves, by the scientific revelations of Federal and State agronomists and lessons learned by Clemson College in its various experiment stations, that it is rather difficult to say that they are the personal property of the plaintiffs. They are rather the adoption by the plaintiffs of common revelations made by many agencies in the search for better and cheaper fertilizers. It is true that the companies themselves have done their part and by experiment and research made definite contribution along this line.

But, even if we were convinced that the secret formulae here shown by much testimony to be the basis of property rights cognizable in the Courts, yet these rights must yield

when they conflict with a valid exercise of the police power of a State. It may seem hard that these secret formulae cannot be universally recognized and protected by the Courts, but it is well established that secret formulae as well as other rights must frequently yield to the valid exercise of the police power by a sovereign State. The control of proprietary medicines by State and National is an exact analogy. If secret formulae of medicines for human consumption can be forced to revelation in the exercise of police power it seems to follow, as night the day, that secret formulae with respect to the supply of plant food must likewise yield to a reasonable and valid exercise of police power. The care for the health and well being of people who take medicines is a proper subject for the exercise of police power on the part of a vigilant legislature in a progressive State. We can see no reason why the Legislature of a State may not compel a reasonable revelation of the source and nature of the plant foods contained in a fertilizer sold to the farmers of the State. It must be remembered that agriculture constitutes the major industry of South Carolina, it is the industry from which hundreds of thousands draw their complete livelihood. Surely in the exercise of police power over the sale of commercial fertilizer, the Legislature of an agricultural State has the power to subordinate rights growing out of secret formulae to a reasonable and valid exercise of the police power vested in the State".

"All property within the jurisdiction of a state, however unqualified may be the title of the owner, is held on the implied condition or obligation that it shall not be injurious to the equal right of others to the use and benefit of their own property. In other words all property is held subject to the general police power of the state so to regulate and control its use in a proper case as to secure the general safety, the public welfare, and the peace, good order and morals of the community. Accordingly, it is a fundamental principle of the constitutional system of the United States that rights of property, like all other social and conven-

tional rights, are subject to such reasonable restraints and regulations established by law as the legislature, under the governing and controlling power vested in it by the constitution, may think necessary and expedient. And to these ends the legislature under its police power may pass laws regulating the acquisition, enjoyment and disposition of property, even though in some respects these may operate as a restraint on individual freedom or the use of property. The subordination of property rights to the just exercise of the police power has been said to be as complete as is the subjection of these rights to the proper exercise of the taxing power; and it is held that this implied condition is quite irrespective of the source or character of the title. This principle is in effect an application of the maxim which underlies the police power, **sic utere tuo ut alienum non laedas".**

6 R. C. L. pp. 193-195; and cases cited.

There is abundant testimony in the Record to the effect that there are many formulas for the manufacture of mixed fertilizers, which have been worked out by the United States Department of Agriculture, the various States and Experiment Stations, some in cooperation with the manufacturers of fertilizer. The fertilizer manufacturer has had the benefit of experiments made by the Federal government and the various State governments in developing formulas, which they now claim are their special property. In addition to this, farmers and the users of fertilizer are furnished with information on home-mixing of fertilizer. In view of all this, it can hardly be said, with any degree of finality that there is any such thing as a secret formula in respect to the manufacture of fertilizers. Besides, the fact that Appellants may suffer some loss by reason of the enforcement of the Statute, is no reason why it should be declared unconstitutional.

Erie Railroad Co. v. Williams, 233 U. S. 685; 34 Sup. Ct. Rep. 761; 58 L. Ed. 1155;

L'Hote v. New Orleans, 177 U. S. 587; 20 Sup. Ct. Rep. 788; 44 L. Ed. 899.

The State in the proper exercise of its police power may regulate trades and business.

"Regulations respecting the pursuit of a lawful trade or business are of very frequent occurrence in the various cities of the country, and what such regulations shall be, and to what particular trade, business or occupation they shall apply, are questions for the State to determine and their determination comes within the proper exercise of the police power of the State, and unless the regulations are so utterly unreasonable and extravagant in their nature and purpose that the property and personal rights of the citizens are necessary, and in manner wholly arbitrary, interfered with or destroyed without due process of law, they do not extend beyond the power of the State to pass and they form no subject for Federal interference".

Gundling v. Chicago, 177 U. S. 183; 44 L. Ed. 725.

Laws requiring honest weights and measures in the sale of articles of general consumption are lawful exercise of the police power.

McLean v. Ark., 211 U. S. 550; 53 L. Ed. 320.

A statute regulating the weight of the standard loaf of bread to be sold, has been held to not be such an unreasonable and arbitrary exercise of the police power as to render the statute void under the Fourteenth Amendment to the Constitution of the United States.

Mathias Schmidinger v. City of Chicago, 226 S. Ct. 578.

A North Carolina statute requiring manufacturers of fertilizer to furnish "the name, location and trade-mark of the manufacturer"; also the chemical composition of the contents of such package and "the real percentage of certain specified ingredients" in the fertilizer, with certain other information, was held to be a proper exercise of the police power.

Patapsco Guano Co. v. Board of Agriculture for N. C. et al., 171 U. S. 345; 43 L. Ed., 191.

This case is cited with approval in the case of *Savage v. Jones* (225 U. S. 503; 56 L. Ed., 1182), which holds that a statute requiring "inspection and analysis, and the disclosure of ingredients, including the minimum percentage of crude fat and crude protein, and the maximum percentage of crude fibre" was a proper exercise of the police power.

One of the latest cases along this line is the case of *Corn Products Refining Company v. Eddy et al.* (249 U. S. 427; 63 L. Ed. page 689). This case is practically in point with the case in question. It involved a regulation of the State Board of Health of Kansas under which sales of table syrup were forbidden unless the label disclosed the ingredients and their proportions. Plaintiff in error, an Illinois Corporation which manufactured in the State of Illinois a proprietary table syrup composed of 85 per cent. corn syrup or glucose, 10 per cent. molasses and 5 per cent. sorghum and sold under the name of "Mary Jane", with a label attached to the can giving the weight and composition of the syrup, brought an equitable action against the members of the Board of Health in one of the District Courts of the State, alleging that the statute was in conflict with the provisions of Section 1 of the Fourteenth Amendment and its enforcement would cause irreparable damage. The Court in discussing this particular question said:

"It is, however, urged that since plaintiff's syrup is a proprietary food, made under a secret formula and sold under its own distinctive name, and since it contains no deleterious or injurious ingredients, the effect of the regulation in requiring plaintiff to disclose upon the label the ingredients and their proportions amounts to a taking of its property and without due process of law. Evidently the purpose of the requirement is to secure freedom from adulteration and misbranding; the mischief of misbranding being that purchasers may be misled with respect to the wholesomeness or food value of the compound. And it is too plain for argument that a manufacturer or vendor has no constitutional right to sell goods without giving to the purchaser fair in-

formation of what it is that is being sold. The right of a manufacturer to maintain secrecy as to his compounds and processes must be held subject to the right of the State, in the exercise of its police power and in promotion of fair dealing, to require that the nature of the product be fairly set forth.

Heath & M. Mfg. Co. v. Worst, 207 U. S. 338, 353; 52 L. Ed. 236, 243; 28 Sup. Ct. Rep. 114;

Savage v. Jones, 225 U. S. 501, 524; 56 L. Ed. 1182, 1191; 32 Sup. Ct. Rep. 715;

Standard Stock Food Co. v. Wright, 225 U. S. 540, 548, 549; 56 L. Ed. 1197, 1200, 1201; 32 Sup. Ct. Rep. 784;

Schmidinger v. Chicago, 226 U. S. 578, 588; 57 L. Ed. 364, 368; 33 Sup. Ct. Rep. 182, Ann. Cas. 1914-B, 284;

Armour & Co. v. North Dakota, 240 U. S. 510, 514, 515; 60 L. Ed. 771, 775; 36 Sup. Ct. Rep. 440, Ann. Cas. 1916-D, 548;

Hutchinson Ice Cream Co. v. Iowa, 242 U. S. 153, 159; 61 L. Ed. 217, 221; 37 Sup. Ct. Rep. 28, Ann. Cas. 1917-B, 643;

Hebe Co. v. Shaw, 248 U. S. 297, 303, ante, 255, 258; 39 Sup. Ct. Rep. 125.

This case is cited with approval in the case of *Amos Bird Co. v. Thompson* (274 Fed. 706) upholding a statute requiring imported eggs to be marked with the name of the country from which imported.

The Court may take judicial notice of the fact that agriculture is the principal industry in South Carolina, and any law affecting it beneficially must have a like effect upon the general welfare of the State.

Sligh v. Kirkwood, 237 U. S. 52; 59 L. Ed. 835.

4.

The Appellants further complain that the amendment is an unreasonable and unnecessary exercise of the police power.

The evidence contained in the record abundantly establishes the fact that this amendment is not unreasonable and is reasonably necessary to promote the welfare of agriculture in South Carolina (R. 29-33, 34, 89-177 and 118-131).

Appellants claim that the users of fertilizer already have ample protection under the laws of South Carolina. It is true that Section 6367, without the amendment, requires the manufacturers to furnish the names of materials entering into the ammonia element, but it does not require the amount of the separate materials to be given. It also requires the manufacturers to furnish fertilizer of a specified formula, where contracted for, but the fact that between 500,000 and 800,000 tons of mixed fertilizer are used in South Carolina every year negatives the conclusion that many users of fertilizer avail themselves of that privilege. The large and almost exclusive use of mixed fertilizer is logically explained when we take note of the fact that fertilizer made by the manufacturers, by special formulas is more costly, and further, most of the farmers of South Carolina operate on a small scale, many of them being tenants who, in most cases, must buy their fertilizer on credit.

There are three primary essential plant food elements in a mixed fertilizer, phosphoric acid, ammonia and potash, Phosphoric acid is, roughly speaking, composed of finely ground phosphate rock mixed with sulphuric acid. Ammonia may be derived from a number of materials including sulphate of ammonia, nitrate of soda, nitrate of potash, ammonium nitrate, urea, urea ammonia solution, cyanaid, and other materials which are soluble in water. It may also be derived from another group of materials which are insoluble in water and which includes packing house tankage, nitrogenous tankage, dried blood, cotton seed meal, fish scrap, peanut meal, etc. Potash is derived from muriate of potash, manure salts, sulphate of potash and magnesia. For a mixed fertilizer giv-

ing the best results, the manufacturer must use such materials in the plant food elements as are suitable to the particular crop to be grown and the type of soil upon which it is to be used.

The record shows that fertilizer having the same chemical analysis may have entirely different effects on different crops and types of soil, also the materials entering into the plant food element are different in price. For instance, an 8-3-3 fertilizer, in which the ammonia element is derived from a large amount of nitrate of soda and a small amount of cotton seed meal, would probably produce high yields when used under truck crops because a truck crop requires a fertilizer which produces quick growth and early maturity. The same fertilizer, however, used under cotton might not give good results because when the nitrate of soda became exhausted, there would not be enough cotton seed meal, which is a slow acting form of ammonia, to mature the plant and bolls. The same is true of the various other materials necessary in the plant food elements used under particular plants, cotton, tobacco, truck, potatoes, etc., require a fertilizer in which the various plant food elements are derived from materials or ingredients suitable to these crops, and unless a mixed fertilizer contains these materials in the proper amounts, and users are furnished with that information, crop failures may result, with great loss to the grower. Furthermore, the manufacturer of a mixed fertilizer, if he desires, may substitute for the valuable and highly beneficial materials, cheaper materials which are often deleterious, and in many cases, destructive to plant growth. Unless the user of fertilizer has some way of knowing the **amount and analysis of the materials** entering into the plant food elements of the fertilizer which he uses, he cannot farm intelligently, or hope to get the best results from his money and labor; neither can he prevent the unscrupulous manufacturer from putting off on him cheap substitutes for the more valuable materials which his crops and particular types of soil require. There are instances, as shown by the record, where crops and soils have been destroyed or seriously damaged as a result of the use of

fertilizers manufactured and sold to farmers who were ignorant of the harmful materials used in their manufacture. It is reasonable to assume that in the various hearings and debates before the Agricultural Committees, and on the floor of the Senate, that these facts were brought before the General Assembly, and as a result, in the lawful exercise of its powers, it enacted this statute so that the farmer would have information that would enable him to use the kind of fertilizer and in the proper amounts, suitable to his crops and types of soil, and prevent the dishonest manufacturer from defrauding the farmer by selling to him cheap materials, destructive to crop growth and soils. The statute also enables the farmers and other users of fertilizers to capitalize on the information given out by the United States Government as to soil analysis and its needs in the way of fertilizer ingredients (R. 89-117 and 118-131).

According to the Record, the Legislature of South Carolina gave long and patient consideration to the amendment when proposed,—having held numerous hearings in committee, and having debated the proposed amendment fully (R. 29-34 and 138-140); and finally concluded as a matter of sound policy that the proposed amendment should be approved and adopted.

Questions of policy are for the Legislature and not for the Court. The rule is well stated as follows:

"The police power springs from the obligation of the State to protect its citizens and provide for the safety and good order of society, and permits reasonable regulation of rights or power in particulars essential to the preservation of the community from injury."

Erie Railroad Co. v. Williams, 233 U. S. 685; 34 Sup. Ct. Rep. 58 L. Ed. 155;

L'Hote v. New Orleans, 177 U. S. 587; 20 Sup. Ct. Rep. 788; 44 L. Ed. 899;

Graves v. Minn., 272 U. S. 425; 47 Sup. Ct. Rep. 122;

N. Y. Ex Rel. Silz v. Hesterberg, 211 U. S. 31; 29 Sup. Ct. Rep. 10; 53 L. Ed. 75;

Holden v. Hardy, 169 U. S. 366; 18 Sup. Ct. 383; 42 L. Ed., 780;

Purity Extract & Tonic Co. v. Lynch, 226 U. S. 192; 33 Sup. Ct. Rep. 44; 57 L. Ed. 184;

Pan Handle Eastern Pipe Line Co. v. State Highway Commission, 294 U. S., 613; 55 S. Ct., 563; 79 L. Ed. 1090.

"When the subject lies within the police power of the State, debatable questions as to reasonableness are not for the Courts but for the Legislature, which is entitled to form its own judgment, and its action within its range of discretion cannot be set aside because compliance is burdensome."

Sproles v. Binford, 286 U. S. 374; 76 L. Ed. 1167.

5.

Finally, the appellants contend that the amendment is unenforceable, but the testimony is abundant that the law may be properly and reasonably enforced. That great agronomist, R. W. Hamilton, of Clemson College, states that he can see no difficulty in the matter of enforcement (R. 114).

Likewise, that widely experienced farmer and publicist, John W. Geraty, testifies that there would be no difficulty in enforcing the law (R. 123).

Besides, as stated by the Court below in its opinion, it must be assumed that the Board of Trustees of Clemson Agricultural College, as enforcing agencies, will give reasonable and sensible interpretation to the amendment, to the end that there will be no difficulty in enforcing the law (R. 153).

Apparently, in their Brief the Appellants abandon the contention that the amendment denies equal protection of the laws to them in contravention of the equality clause in the Fourteenth Amendment; hence, in respect to this phase of the case we will content ourselves by citing the comparatively recent case of *Frost v. Corporation Commission*, (278 U. S. 518; 73 L. Ed. 483), in which it is declared:

"The purpose of the clause in the Federal Constitution in respect to equal protection of the laws is to rest the rights of all persons upon the same rule under similar circumstances."

To summarize, there can be no question as to the right of the State, in the exercise of its police power, to enact laws requiring the manufacturers of fertilizer to furnish the users with information as to the amount and the substances used in the fertilizer elements. There is no such thing as a secret formula, as generally understood, in the manufacture of fertilizer. The Federal Government and State institutions and experiment stations are constantly sending out Bulletins giving the farmer the latest methods and formulas for mixing different types of fertilizer. It is a matter of common knowledge that many farmers mix their own fertilizer, but there are many others, particularly small farmers and landowners who have to depend upon hired help, are forced to buy ready mixed goods. They are at the mercy of the manufacturer and are forced to take what he offers. If the manufacturer desires to substitute in his fertilizer cheap materials for a valuable element of plant food, the purchaser has no way of knowing it. He can only know, under the old fertilizer statute, the chemical analysis of the fertilizer used and the substances entering into it, but he does not know the amount of the substances or whether they will be beneficial or harmful to the crop growth. There is a real necessity for this statute. Statistics show that South Carolina uses one-eighth of all the fertilizer used in the United States, or approximately 750,000 to 800,000 tons annually, costing from $20,000,000.00 to $25,000,000.00. This statute cannot hurt the honest manufacturer because it will only require him to do what he would otherwise do, but it will be a benefit to him in that the unscrupulous manufacturer will be required to conform to the same standards and it will protect and help the users of fertilizer in that he will get what they pay for, and will know whether or not they are getting exactly what they buy.

IN CONCLUSION

It is respectfully submitted that the Statute enacted by the Legislature of the State of South Carolina and now under scrutiny constitutes a valid and reasonable exercise of the

police power of the State, and does not violate any constitutional limitation contained in either the State or Federal Constitutions and that, accordingly, the appeal from the Court of first instance to this ought to be dismissed.

Respectfully submitted,

JOHN M. DANIEL,
Attorney General,
J. IVEY HUMPHREY,
Assistant Attorney General,
M. J. HOUGH,
Assistant Attorney General,
HAROLD MAJOR,
WILLIAM C. WOLFE,
Solicitors for Appellees.

APPENDIX A

Act of 1936, Containing "Open Formula" Amendment "No. 728

AN ACT to Amend Section 6367, Code of Laws of South Carolina, 1932, as Amended by Act 232 of the Acts of the General Assembly of South Carolina, 1933, Entitled, 'An Act to Amend Section 6367, Code of Laws of South Carolina, 1932, so as to Require the Specification and the Guaranteeing of the Content of Certain Materials Used in the Manufacture and Mixing of All Fertilizers Supplying Certain Elements and to Provide a Penalty for the Violation of Certain Fertilizer Contracts', Approved April 17, 1933, so as to Further Provide for the Specification and the Guaranteeing of the Poundage and Content of Materials Used in the Manufacture and Mixing of All Fertilizers Supplying Certain Elements.

Section 1. (Sec.) 6367, 1932 Code, Amended—Fertilizer Manufacturers and Mixers State Amount and Analysis of Each Material, or Source, of Each Plant Food Element Used in Manufacture of Fertilizer Mixtures.—Be it enacted by the General Assembly of the State of South Carolina: That Section 6367, Code of Laws of South Carolina, 1932, as amended by Act No. 232 of the Acts of the General Assembly, 1933, entitled, 'An Act to amend Section 6367, Code of Laws of South Carolina, 1932, so as to require the specification and the guaranteeing of the content of certain materials used in the manufacture and mixing of all fertilizers supplying certain elements and to provide a penalty for the violation of certain fertilizer contracts', approved April 17th, 1933, be and the same is hereby amended by adding in front of the word 'that' on line one of said Section 6367 as amended the following: '(a)'.

'Amend further by adding after the word "fertilizer" at the end of said Section 6367 as so amended the following: '(b) That the amounts and analysis of each material, or source, of each plant food element used in manufacture, of a fertilizer mixture containing two or more plant food ele-

ments be stated on a tag attached to each sack or container, such amounts of materials to be stated in pounds per hundred pounds of mixture contained in the sack or other container.

'This statement of pounds of materials used in the manufacture of a fertilizer mixture shall be in addition to the statement of chemical analysis as required by Section No. 6366 of the Code of Laws of South Carolina, 1932'.

'So that said Section 6367 as amended by said Act No. 232 of the Acts of the General Assembly of South Carolina, 1933, when so amended shall read as follows:

'Section 6367: (a) That the materials used in the manufacture and mixing of all fertilizers supplying nitrogen or ammonia, and offered for sale in this State, shall be divided into two classes, namely, water-soluble and available water-insoluble; and the percentage of nitrogen or ammonia coming from either of these two classes shall be guaranteed, but allowing a variability of one-fourth of one per cent. for goods containing two per cent. of ammonia or under, and a variability of one-third of one per cent. for goods containing two and three per cent. ammonia, and a variability of one-half of one per cent. for goods containing over three per cent. ammonia, and the several materials in each of these two classes shall be named on the bag or on a tag attached thereto, and it shall be permissible for the manufacturer to substitute one or more materials in either class of approximately equal agricultural value for other materials of the same class: Provided, That where there is a contract of agreement between a manufacturer and a purchaser of fertilizer that the fertilizer will be manufactured by the use of certain definite sources and amounts of ammonia and potash, the fertilizer must be manufactured from these materials without substitution of other materials and failure on the part of the manufacturer to comply with this requirement shall render the manufacturer liable to the purchaser for damages as it is now prescribed by law, and in addition thereto the manufacturer shall pay to the purchaser a penalty equal to one-fourth of the purchase price of such fertilizer.

'(b) That the amount and analysis of each material, or source, of each plant food element used in manufacture, of a fertilizer mixture containing two or more plant food elements be stated on a tag attached to each sack or container, such amounts of materials to be stated in pounds per hundred pounds of mixture contained in the sack or other container. This statement of pounds of materials used in the manufacture, of a fertilizer mixture shall be in addition to the statement of chemical analysis as required by Section No. 6366 of the Code of Laws of South Carolina, 1932' ".

APPENDIX B

Opinion Filed by the Court Below

Introduction

The function of an Opinion in an equity case where full Findings of Fact and Conclusions of Law, separately stated, are also filed, is to tie the two together so as to clarify and [fol. 189] explain the decision of the Court. Manifestly, Equity Rule 70½, reading as set out below[1] requires the Trial Court to present its findings of fact on vital matters in a much more definite way than was formerly the practice. An Appellate Court can much better ascertain the views of the Trial Court about questions of fact when they are separately stated than disentangle them from a general opinion in which Findings of Fact are intimately intermingled with legal propositions. In this particular case, we have taken the view that a full statement of the Findings of Fact is not only necessary but is the most important element in the decision of the case. **After all in constitutional cases where the attack on a State Statute is made on the ground of arbitrariness, impossibility of enforcement and unreasonable hardship,** the decision of the final issue depends essentially upon the factual showing. The Supreme Court of the United States has only recently in the *Stockyards case*, 298 U. S., 38, and in the case of *Walters v. N. C. & St. L. Railway*, 294 U. S., 405, pointed out that in cases of this character the decision of the questions of fact is the important matter both in the Trial Court and on final appeal to the Supreme Court of the United States.

---

[1] "In deciding suits in equity, including those required to be heard before three Judges, the court of first instance shall find the facts specially and state separately its conclusions of law thereon; and, in granting or refusing interlocutory injunctions, the court of first instance shall similarly set forth its findings of fact and conclusions of law which constitute the grounds of its action.

"Such findings and conclusions shall be entered of record, and if an appeal is taken from the decree, shall be included by the clerk in the record which is certified to the appellate court under rules 75 and 76. (Amended Nov. 25, 1935.)"

Subject Matter of the Suit

Agriculture is the chief industry of the State of South Carolina. The census of 1930 shows that most of the adults in the State were engaged in farming and derived their chief support from agriculture. The witness, Hamilton, thoroughly familiar with agriculture in South Carolina, testifies as follows:

> "Now, my work, that has been continuously with the farmers, and one of the greatest problems that we have and the subject which I have had to give more information on to the farmers in South Carolina is fertilizer. We have in South Carolina 165,000 farmers—I don't mean rural population, but 165,000 farms or farmers which include sharecroppers, tenants, wage hands and the land owners. Almost without exception every one of those farmers, his living and his welfare is affected by fertilizer because every one of them that grows any cash crop uses fertilizer with the execption, I will admit, in the time of depression when they don't have money to buy fertilizer. If it went up, in case they choose to do without it, they do without it because they cannot pay for it."

The use of commercial fertilizers in agriculture has always been a practice in this State. As testified in this case, most of the farmers in South Carolina use commercial fertilizer and the annual expenditure therefor runs into the millions of dollars. Of course, large use is made of the manure obtained from domestic animals on the farms themselves, but from the very beginning it has been recognized that this source is not only inadequate so far as quantity is concerned, but has not the variety of content necessary for producing the staple crops of the State. Wise or unwise, South Carolina has always produced marketable crops such as cotton, truck and tobacco very greatly out of proportion to the livestock raised in the State. To meet this demand for commercial fertilizer corporations have developed this enormous business. The commercial fertilizers are manufactured and sold in this State,

and such manufacture and sale have inevitably been the subject matter of legislation by the State Legislature. In the early nineties an agricultural college was established in the State. This institution, Clemson Agricultural College, has grown rapidly and has through many agencies spread the information with reference to the use of fertilizers to the farmers themselves. By reason of Federal and State Legislation and enabling appropriations, County Demonstration Agents have been abroad in the land, and with more or less efficiency and success have brought the benefits of scientific investigation and experiment to the farmers and enlightened them on the proper use of commercial fertilizers. Clemson Agricultural College has been largely supported by a sales tax on the fertilizers used in the State. The theory is that the college and its ancillary services are primarily for the farmers and it is nothing but just that the proceeds of the sales should support this institution and its extension work. Therefore, we find that the trustees of this institution are logically charged with the enforcement of the fertilizer law. These trustees are, therefore, properly named as the defendants in this suit.

Statutes of the State have for years made it necessary for the fertilizer companies to show by way of tag the contents of the particular mixture contained in the sack. As pointed out in the Findings of Fact in great detail, the farming population has for a long time known the particular value of three major plant food elements. These three plant foods are phosphoric acid, nitrogen and potassium. The terminology used in statute and regulation has not always been uniform or accurate. Phosphoric acid is valuable because it contains a large percentage of the ultimate chemical element phosphorus nitrogen is the ultimate chemical element of value contained in the substances variously referred to as nitrogen and ammonia. Potassium is the ultimate chemical element contained in the substance more frequently referred to as potash. So in this discussion we refer to the major plant foods as phosphoric acid, nitrates and potash. For

many years the law required the analysis of the final mixture as put into the sack to be shown on the tag attached thereto and to reveal the percentage, in the final mixture, of these three major plant foods.

As science and experience have enlightened the farmers about the use of fertilizer, regulation by the legislature has required the publication on the tag of increasing information. Several years ago a statute was passed requiring the fertilizer companies to declare from what sources these major plant foods were obtained. This requirement was generally found to be so reasonable and to meet such a reasonable need for information on the part of the farmers that no serious question has ever been made of its propriety in fact or in law. Additional legislation has required the information to be given with greater particularity than this so far as the nitrates are concerned. The function of the nitrates generally is to speed the growth of the plant during the growing season. Nitrates, if rapidly soluble, accelerate the growth of the plant itself in a very positive and evident way. Nitrates, when less soluble, are no less valuable for certain types of crops on certain types of soil, but the effects are distributed over a longer period and the increased rate of growth not so noticeable. It was, therefore, nothing but reasonable that the manufacturer and seller of commercial fertilizer should be required to shew the nature of the nitrates supplied in his mixture offered for sale with respect to "solubility" or "insolubility". We find under the testimony that a definite classification of nitrates into "soluble" and "insoluble" has grown up and come to have very definite meaning with respect to commercial fertilizers.

But as time has gone on and the farmers have become more and more enlightened, and the Legislature more and more mindful of the needs and desires of the farmers, it was felt that even this information was not sufficient and that not only should the purchasing farmers have information as to the major plant foods contained in the final mixture and the sources from which they were derived, but that they were entitled to a quantitative statement of the poundage of such

sources used by the manufacturer in supplying the desired percentage of each major plant food contained in the final mixture. This is better understood when we explain the meaning of the word "source". In the fertilizer business, manufacture, sale and use, the word "source" means that substance which is commonly used as a carrier for a particular plant food element. For example, nitrate of soda is a source or carrier of the desired plant food nitrogen. Nitrate of soda also contains a small percentage of potash and, therefore, nitrate of soda is properly referred to as the "source" or "carrier" for both nitrogen and potash.

Pursuant to this feeling, therefore, there was passed at the 1936 session of the Legislature of South Carolina an Amendment to the fertilizer laws putting into effect what is popularly known as the "Open Formula". This Amendment was added at the end of one of the important sections of the fertilizer law as it then existed and is as follows:

"'(b) That the amount and *Analysis* of each material, or source, of each plant food element used in manufacture, of a fertilizer mixture containing two or more plant food elements be stated on a tag attached to each sack or container, such amounts of materials to be stated in pounds per hundred pounds of mixture contained in the sack or other container. This statement of pounds of material used in the manufacture, of a fertilizer mixture shall be in addition to the statement of chemical analysis as required by Section No. 6366 of the Code of Laws of South Carolina.'" (Italics ours.)

The fertilizer companies have brought this suit to enjoin the enforcement of this Open Formula Statute, and thus the questions are presented to this Court for decision. The attacks on the statute are primarily on constitutional grounds and we may sum them up in four major contentions. The stated contentions of the plaintiffs are well phrased but for purposes of clarity and discussion as we view the case, we see fit to phrase them as follows:

I

That the statute, couched in indefinite and inaccurate language, is incapable of reasonable enforcement. That the only honest enforcement on the part of the enforcing agencies will amount to unreasonable and arbitrary taking of plaintiffs' property and so harm their businesses as to confiscate and destroy them. Stated in other words, that honest compliance on the part of the companies with the terms of the statute will be so expensive as to destroy the plaintiffs' businesses in violation of their constitutional rights.

II

The second constitutional question, as we view it, is closely akin to the first one and dependent upon the decision of the first question for a correct understanding thereof. It is briefly [fol. 195] that the statute, even if susceptible of a reasonable interpretation by enforcing agencies, and even if susceptible of compliance by the plaintiff companies, nevertheless amounts to an unlawful, unreasonable and unconstitutional exercise of the police power of the State of South Carolina. That the statute has no foundation in the necessities of the purchasing farmers and will not tend in any reasonable way to satisfy an existing need, but only serve to satisfy curiosity on the part of the farmers.

We say again that the decision on this constitutional question depends largely upon our decision on the first constitutional question presented; namely, upon the interpretation of the statute.

III

That the statute when enforced will deprive the companies of the value of certain property rights which they have by reason of the value of secret formulae and trade-marks which they have built up by years of experience and at an enormous expense. That this destruction of property values is not necessary to meet any existing needs of the farmers of the State, is without compensation, is arbitrary and unreason-

able and amounts to the taking of property without due process of law and denies to the plaintiffs the equal protection of the law; all in violation of the Fourteenth Amendment to the Constitution of the United States and similar provisions of the Constitution of South Carolina.

IV

A final contention is made by the plaintiffs that the Statute is unconstitutional because it makes no provision for the disposition of existing stocks of fertilizer on hand in South Car- [fol. 196] olina and with respect to which compliance with the new Statute is practically an impossibility. That this destruction of the value of these existing stocks is the taking of property without due process of law, is unreasonable and arbitrary, and being a taking without compensation is in violation of the Fourteenth Amendment to the Federal Constitution.

In our opinion, the first two contentions are the vital ones. Is the Statute voided for indefiniteness and is it impossible of enforcement, and resulting compliance without unreasonable expense? We must, therefore, address ourselves to the construction of this Amendment putting into effect the Open Formula Statute. In doing so, we invoke immediately a well accepted principle of construction frequently applied in cases of this character. **It is well settled that in construing a Statute which has not yet been applied by a regulatory body charged with its enforcement, a Court must assume that the Statute will be given a reasonable and constitutional interpretation if possible.** The Board of Turstees of Clemson College have not as yet issued any rules and regulations as to the enforcement of this Statute. At this stage we are without the benefit of knowing how they will construe the individual phrases used in the Statute or how they will apply the Statute as a whole. We must, therefore, assume that both in determining the meaning of certain key phrases in the Statute and in determining the effect of the Statute as a whole this administrative body will, as they should, give

both individual phrase and entire Statute, a reasonable interpretation. We do have, however, as indicative of the probable compliance with this principle of statutory construction by the enforcing agencies the benefit of their spirit and attitude in enforcing previous statutes. It is important to note that several of the key phrases in this Statute have occurred from time to time in previous statutes regulating the fertilizer business and have been given a reasonable and sane construction by the enforcing agencies. We take occasion at this point in our Opinion to call particular attention to this matter because we think that it is vital to the correct understanding of our decision. The proper construction by us, and by the administrative agencies of the word **"analysis" as used in the Statute is important in determining whether or not the Statute as actually applied will be reasonable or unreasonable.** We have been at great pains in our Findings of Fact to deal with this word "analysis" and have pointed out with the greatest clarity of which we are capable, that it must be given a reasonable interpretation and not a highly technical interpretation. As we have pointed out we do not view it as requiring a complete chemical analysis of every substance, however remote its origin, entering into the final product. It is significant to here point out that even where the phrase "chemical analysis" has been used in previous statutes, such chemical analysis has been construed to be sufficient if it shows the three major plant foods with which the farmers were familiar and about which they desired knowledge in making their choice of fertilizers. If this administrative agency has given the phrase "Chemical analysis" such a reasonable interpretation, we feel that we are justified in assuming that such a reasonable interpretation will be made of the broader term "analysis" as it appears in the instant Statute.

This rule of statutory construction which the Court has invoked is important also in determining the anticipated regulations with respect to the quantitative showing required by the Statute. It may be conceded that the Statute

would put an unreasonable, arbitrary and unjust burden upon the companies if it should be construed to mean that the companies would be required by the enforcing agencies to keep separate books on the history of the process of mixings for each one hundred pounds. This would manifestly increase the amount of bookkeeping necessary, would increase the amount of labor required, would increase the size of the mixing and storage bins necessary and would increase all of these factors to such an extent that the resulting expense would practically mean the destruction of the complainant's business. Indeed, it would appear reasonable that these increased costs on the final product would practically mean that the farmers could no longer buy commercial fertilizers except those of the very cheapest grades. But, instead of presuming that the Statute will be given such a high-handed, unreasonable and vicious interpretation by the enforcing agencies, both experience and well-settled principles of law justify us in assuming that the interpretation and enforcement will be reasonable and just. The testimony shows abundantly that, while smaller mixtures are sometimes made, the usual volume involved in what we would call a mixture from the manufacturers' standpoint is a pile of practically uniform composition ranging in size from one thousand to five thousand tons. The physical way in which each batch of fertilizer as it comes from the machine mixer is poured upon the curing and storage pile is really the key to the understanding of this phase of the case. The testimony is that each batch as it falls from the mechanical mixer is taken up overhead and poured on the pile in such a way that a small portion of each batch finds it way to the three if not the four corners of the pile. Indeed, as the final mixture of fertilizer falls on the storage pile, it falls in conical rather than a cubical form.

From this we conclude that a reasonable interpretation of the Statute by the enforcement agencies, such as we have a duty to assume they will make, would be satisfied if the revelation on the tag showed the general average with respect to all items of information contained on the tag coming from

an honest desire to make the pile of five thousand tons of uniform composition. If this is what the Statute requires with reference to the history of each mixture and with reference to the piling and storing thereof, there is practically no additional burden or expense put upon the manufacturing company which is not already incident to the business.

But even if there is demand for unusual mixtures, and even if the manufacturers do from time to time have to keep fuller records and more intricate historical showings of the processes with respect to the mixtures finally offered for sale, all of this is no new element in the business. Neither will the enlargement of warehouses within reasonable degree for storing of many smaller piles bring a new or unreasonably expensive element into the business. Fertilizer factories, by reason of the ordors emitted, are generally located on spur tracks, well away from residential and business centers. The storage sheds are simple wooden sheds over concrete floors, and enlargement of these rather rude structures over inexpensive real estate will not actually increase the cost per ton to any great extent. We cannot help but think that the plaintiffs, both in testimony and argument, have over-emphasized the extent of this increased expense.

The testimony is abundant that upon specific demand the companies have already been mixing special mixtures for large farmers and storing them separately. Accounting methods have already determined the increased charge which takes care of this extra expense of records and storage to the satisfaction of the selling companies. The testimony is that a charge of from 50 cents to $2.50 has heretofore taken care of this extra charge in sporadic cases. Certainly if the demand for such better records and enlarged storage is going to be widespread, the charge, instead of increasing, should decrease. Having the opinions indicated in this brief discussion of the interpretation and application of the Statute as it will probably be made by the enforcing agencies, we can see nothing to the plaintiff's contention in their first attack on the constitutionality of the Statute.

We do not leave this phase of the case, however, without saying that final word on the interpretation of this Amendment will not be with the administrative agencies but with the Supreme Court of the State of South Carolina, and of course that Court will put reasonable construction upon both particular phrases and purport of the entire Statute. This proposition that a Court in passing upon the constitutionality of a Statute must assume that enforcing agencies will give reasonable and sensible interpretation rather than unreasonable and arbitrary interpretation is so well settled that the authorities cited here are cited in the footnote rather than in the body of this Opinion. The rule can be stated in stronger terms, that in a situation like this, the Court must assume that a statute, if capable of an interpretation effecting a constitutional result, will be given that interpretation by both state administrative agencies and State Supreme Court charged with the duty of finally interpreting a State Statute.

We are not willing at this time to seriously entertain the prediction that either agency of state government, executive or judicial, will make the strained construction of the Statute of which the plaintiffs contend that the Statute is capable. We are prevented from doing so both by common sense and well settled principles of law.

2. Closely akin to the proposition of law we have just been discussing are those involved in dealing with the Second Question of Constitutional Law. Is the Statute here such an unreasonable, arbitrary and high-handed exercise of the police power as to be unconstitutional under the Federal Constitution?

First, it will be our duty to decide whether or not the Statute as reasonably interpreted tends to accomplish the evident purpose of the Legislature.

Secondly, if it does, does it do so in a reasonable way?

In our Findings of Fact we have discussed this phase very fully. We have been at great pains to point out the increasing knowledge on the part of the farmers of South Carolina of the correct use of fertilizers. If we felt that the open formula

statute simply put an additional burden upon the plaintiffs without a corresponding benefit to the intended beneficiaries of the Statute, it would seem that we would be forced to the conclusion that the Statute was unreasonable and arbitrary. However, it is shown that, in the progress which agriculture is making in this State, the farmers know very well the practical results obtained from the different types of fertilizers. There was a time when a bald statement that the fertilizer was 8-3-3 was sufficient. The farmer in a rough sort of way knew that phosphoric acid, nitrates and potash were beneficial to his land, but now he knows a great deal more. He knows a great deal more not only about the fertilizers themselves but he knows a great deal more about his own land and its particular needs. His choice of a fertilizer to meet his particular needs, both as to plants raised and soil cultivated, is now made with a great deal of intelligence; he, therefore, has both the need and the desire to know with increased certainty both the analysis and the history of the fertilizer he is buying. To meet this need in an effective way, the Legislature passed the Statute. The Statute when reasonably interpreted tends in a definite and reasonable way to meet this existing need. This test as to the validity of the Statute under the police power has, therefore, been met and the Statute must be sustained against this attack.

The attack on the Statute as being beyond the police power on the theory that it is void and incapable of honest enforcement and obedience has already been discussed in the first phase of this Opinion. The State has under its police power the right to require manufacturers to operate under more expensive conditions. It has a right to require that more elaborate and accurate records be kept as to a particular business, provided, that such increased expenses do not so increase the costs of manufacture and record as to increase the costs of the finished product to such an extent that the business is practially destroyed. On this score, in our Findings of Fact we have found that the increased costs of manufacture and record are met by a small charge which, as a matter of custom, has been

passed on to the consumer, neither is the amount of this charge so great as to suggest in anywise that the quantity of fertilizers purchased will be substantially decreased. Indeed, according to the theory of the plaintiff's testimony the better the fertilizer meets the needs of the farmers the more they will buy and the better their crops will be on a given acreage, and the better situation the farmers will be in financially to pay for the fertilizer which they purchase. The testimony of various experts and sales managers, plaintiffs' own witnesses, is that the better the fertilizer and the more intelligent its choice, the better is the result for the farmrs. They say that this is true both as to individual farmers and to agriculture generally.

3. What about property rights in the shape of secret formulae and trade names, and their destruction by the Statute? To begin with, it is doubtful whether these secret formulae and trade names belong personally to the plaintiffs. These secret formulae used by the plaintiffs have been so largely contributed to by the experience of the farmers themselves, by the scientific revelations of Federal and State agronomists and lessons learned by Clemson College in its various experiment stations, that it is rather difficult to say that they are the personal property of the plaintiffs. They are rather the adoption by the plaintiffs of common revelations made by many agencies in the search for better and cheaper fertilizers. It is true that the companies themselves have done their part and by experiment and research made definite contribution along this line.

But, even if we were convinced that the secret formulae here shown by much testimony to be the basis of property rights cognizable in the Courts, yet these rights must yield when they conflict with a valid exercise of the police power of a State. It may seem hard that these secret formulae cannot be universally recognized and protected by the Courts, but it is well established that secret formulae as well as other rights must frequently yield to the valid exercise of the police power by a sovereign State. The control of proprietary medi-

cines by State and National is an exact analogy. If secret formulae of medicines for human consumption can be forced to revelation in the exercise of police power it seems to follow, as night the day, that secret formulae with respect to the supply of plant food must likewise yield to a reasonable and valid exercise of police power. The care for the health and well being of people who take medicines is a proper subject for the exercise of police power on the part of a vigilant legislature in a progressive State. We can see no reason why the Legislature of a State may not compel a reasonable revelation of the source and nature of the plant foods contained in a fertilizer sold to the farmers of the State. It must be remembered that agriculture constitutes the major industry of South Carolina, it is the industry from which hundreds of thousands draw their complete livelihood. Surely in the exercise of police power over the sale of commercial fertilizer, the Legislature of an agricultural State has the power to subordinate rights growing out of secret formulae to a reasonable and valid exercise of the police power vested in the State.

We have stated in the fourth contention of the plaintiffs as follows:

"IV

"A final contention is made by the plaintiffs that the Statute is unconstitutional because it makes no provision for the disposition of existing stocks of fertilizer on hand in South Carolina and with respect to which compliance with the new Statute is practically an impossibility. That this destruction of the value of these existing stocks is the taking of property without due process of law, is unreasonable and arbitrary, and being a taking without compensation is in violation of the Fourteenth Amendment to the Federal Constitution."

This attack seeks to condemn the Act as unconstitutional because of its application to existing stocks of fertilizer on hand and unsold, even if it is upheld as to stocks of fertilizer resulting from future manufacture. We think that this contention of the plaintiffs amounts to nothing, in view of the interpretation of the Act which we have set forth in our answer

to the first constitutional objection. Every reason which suggests that a sensible interpretation will be given by the administrative agencies as to the future manufacture applies with even greater force to their attitude towards existing stocks. There is nothing in the Statute or in this suit on the Statute which would deprive the enforcing agencies of their authority to act sensibly and reasonably with respect to the existing stocks. The companies admittedly have available the records as to the materials which have gone into the fertilizers which they have on hand. All that we have said about the possibility of showing the contents of each sack on the principle of averages applies to the stocks on hand as well as to the manufacture of fertilizer in the future. It may be that the search for data in order honestly to comply with the Statute, as it applies to the stocks on hand, will involve retrospective work rather than prospective work. There is, however, no showing before us that such retrospective work on the records of the companies will not be reasonably accurate and will not enable the companies to comply in a reasonable way with the terms of the Statute. It is true that the companies were not advised when these stocks were manufactured that they would be required to publish such data as is now required by the Open Formula Statute. But they, the plaintiffs, upon whom the burden rests to show that it is impossible to obtain such data from the records which they have, or that the obtaining of such data would be an unreasonable and arbitrary burden, have not shown that to this Court. In adjusting the terms of the Statute to the data capable of revelation by reasonable search, the enforcing agencies will, we are sure, act with common sense, and that no capricious or vicious action on their part will characterize their attitude towards the disposition of these existing stocks. Administrative agencies vested with discretion do not act stupidly, but should they adopt such a course, recourse can still be had to the Court for injunctive relief. As a matter of fact, a long period of immunity has been accorded the plaintiff companies during the pendency of this suit.

We feel, too, that under the testimony we could dispose of this contention because of the small amount of fertilizers on hand when viewed in comparison with the enormous business done by the plaintiff companies. The amount of fertilizers on hand is so small as hardly to merit special consideration, and certainly the whole Act will not be declared invalid on account of the remnants in the hands of a few companies. Injunction would not be granted to protect these remnants from reasonable enforcement even if the law were invalid as to them, because, in our opinion, there would be a complete and adequate remedy at law. If the State sought to prosecute the companies for disposing of such small stocks, the defense of unconstitutional application of the Statute to the sale of these small stocks could be set up as a defense to the criminal prosecution. If the form of the action turns out to be a suit for the penalties, under the applicable statutes, the companies could still set up the unconstitutional application of the Statute in this respect as a defense to such suit for the penalty. In either type of action a full, complete and adequate remedy at law will be available to the plaintiff company which still has on hand any considerable amount of fertilizers. Then, if the essential elements of Federal jurisdiction are present, such action can be tried in the Federal Courts and the complete and adequate remedy at law will therefore be one available in the Federal Courts. (*Matthews v. Rogers*, 284 U. S., 521.)

All through this opinion we have avoided any discussion at all on the wisdom of this legislation. We have been of course mindful that the wisdom and policy of such legislation is a question for the Legislature. The fact that we may think that the Statute does require the publication of some information which may not be necessary at all times to every purchasing farmer does not justify us in striking down the Statute as being unreasonable and arbitrary. As we have said before, we must presume that the enforcing agencies will give the Statute a reasonable and sensible construction both as to particular term and general purpose. The testimony shows clear-

ly that they have so acted in similar matters over a long period of years. But quite apart from this, we must presume that the enforcing agencies will act in a constitutional way and give the Statute an interpretation which will effect a constitutional result, rather than go out of the way and presume that the enforcing agencies will put an unconstitutional interpretation upon the Statute simply because it is stoutly contended that such an unconstitutional interpretation is possible. We have endeavored to point out that the interpretation of the Statute which the plaintiffs insist may be made would be highly technical and arbitrary, and we are prevented from considering this interpretation by previous conduct of the enforcing agency, by common sense and above all by well settled principles of statutory construction.

In this Opinion we have avoided the citation of many cases which would sustain the rather primary principles of constitutional law herein discussed. The cases which we have considered and which have controlled our decision on various phases of the case, are cited in notes at the end of this Opinion. For the reasons set forth in this Opinion, which must, as we have said be read in connection with the rather full Findings of Fact herewith filed, we think that this Bill should be dismissed and the Injunctions, both Interlocutory and Permanent, should be denied.

APPENDIX C

Findings of Fact

History and Background of the Suit

I

The plaintiff, National Fertilizer Association, Incorporated, is a corporation having no capital stock, organized and existing under the laws of the State of Maryland. It is organized for the purpose of co-operative action in the development [fol. 211] of the fertilizer industry as a whole and operates throughout the major portion of the United States. Its members contribute by way of dues to its support. A number of the co-plaintiffs in this suit are members of this association. The co-plaintiffs in this suit are persons, individual firms and corporations engaged in the manufacture and sale of fertilizers and operate in whole or in part in the State of South Carolina.

II

Defendants are members of and constitute the Board of Clemson Agricultural College and are charged by the laws of the State of South Carolina with the enforcement of the various laws of the State which relate to the control of fertilizer manufacture and sale in the State of South Carolina. Clemson Agricultural College is an institution supported by the State by direct appropriation and by the allocation to it of the fertilizer inspection taxes. The control of the fertilizer business by the Trustees of the College has, therefore, both an historical and a logical basis. John M. Daniel is the Attorney General of South Carolina and in proper cases conducts in the name of South Carolina suits to enforce the fertilizer law. He has this authority both in actions brought directly in the name of the State and those brought in the name of the State for the benefit of private individuals seeking redress under the fertilizer law.

III

The South Carolina Legislature has for years passed many statutes controlling the manufacture, sale and labeling of fertilizer used by the farmers in the State. For many years the law has required manufacturers and sellers of fertilizer to reveal by a tag attached to the sacks the analysis of the fertilizer contained in the sacks. This information has been commonly supplied and is a matter of general knowledge to the farmers who purchase the fertilizer. The defendants in this suit have for years enforced the provisions of the statutes requiring the disclosure of this information to the farmers. The testimony shows abundantly that the whole matter has been handled in a remarkable spirit of co-operation and good-will between the enforcing officers and the fertilizer companies.

IV

The analysis which has been shown on the tag before the passage of the 1936 Amendment (hereinafter referred to) has disclosed the percentage of the amount of plant food elements used in the manufacture. This information was originally confined to the percentage disclosed as to the three main plant food elements. These plant food elements being, stated in the order of their use in common parlance, Phosphoric Acid, Nitrogen and Potash. Several years ago the law was amended so as to require the fertilizer to show not only the percentage of each major plant food contained in the mixture but to reveal the source from which each major plant food is derived.

V

Further legislation regulated particularly the use and disclosure of different types of nitrogen in the fertilizer. Section 6367, Code of Laws, 1932, recognizes the distinction between water-soluble and available water-insoluble nitrogen. This regulation was well founded both as to the possibility of manufacture and as to the varying needs of the purchasing farmers; nitrogen being needed in many cases in the water-

soluble form and being needed in other cases in the water-insoluble form. In most cases the combination of the two being the proper form in which nitrogen was supplied to the growing crops. The enforcement of this provision with reference to the nitrogen content of fertilizer has been found to be practical.

VI

As a result of years of experiment by Clemson College, through its experiment station, and as a result of further experiments by private individuals, it was thought advisable to require the disclosure of an additional type of information which had never been required before. All of this resulted in the passage by the Legislature of 1936 of the Amendment to Section 6367. This Amendment is as follows:

"* * * (b) That the amounts and analysis of each material, or source, of each plant food element used in manufacture, or a fertilizer mixture containing two or more plant food elements be stated on a tag attached to each sack or container, such amounts of materials to be stated in pounds per hundred pounds of mixture contained in each sack or other container." * * *

This Amendment has been published information and has been referred to throughout this litigation as the "Open Formula Act."

VII

Stated in its simplest terms the force of this Amendment is to require the manufacturerers and sellers of fertilizers to state not only the precentage of each plant food element used in the manufacture and not only by the use of general terms the source of that element, but to state in addition the number of pounds of each particular source, or carrier used in each one hundred pounds of the mixture contained in the sack of fertilizer.

VIII

A simple illustration shows the effect of the 1936 amendment upon the fertilizer business as it had been regulated

by the previous statutes. We take a common brand of fertilizer to illustrate—"8-3-3" is a mixture commonly used by many cotton farmers in the State of South Carolina. In fertilizer language this means that the final mixture as analyzed by the chemist at the end of the process of manufacturing and mixing contains three major plant food elements in the following proportion: 8 per cent phosphoric acid; 3 per cent nitrogen and 3 per cent potash. In addition to this bald statement of the percentage analysis, the law had previously required the manufacturer to state from what source the 8 per cent phosphoric acid was derived. Likewise the sources of the nitrogen and potash were required to be stated. For example, phosphate rock as dissolved by mixture with sulphuric acid is a common basis of phosphoric acid as used in fertilizer. If the 8 per cent of phosphoric acid as contained in the final mixture comes from this source, a bald statement that the source was "Super-Phosphate" met the requirements of the statute.

There are many sources of nitrogen supply and the use of these various sources is not at all uniform. The sources of potash, while not so varied, nevertheless covers quite a wide range of materials. The 1936 Amendment requires the fertilizer company to state on its tag not only the source of each major plant food element but to go further and reveal the actual number of pounds of source used to obtain the percentage of each major plant food element shown in the analysis of the final mixture. For example, if the nitrogen carriers were both cotton seed meal and nitrate of soda the net result of 3 per cent nitrogen might be obtained from 50 pounds (in 100) of 7 per cent cotton seed meal and 20 pounds (in 100) of 18 per cent nitrate of soda. Previous to the 1036 Amendment it was sufficient to state that the 3 per cent of nitrogen was obtained from cotton seed meal and nitrate of soda without revealing the poundage of each source used in the mixture.

IX.

The "Open Formula Act" by its terms was to take effect on August 1, 1936. Between the passage of the Act in May,

1936 and late in July, the fertilizer companies acting largely through their association, held numerous conferences with the Trustees of Clemson College with reference to the enforcement of the new law. There conferences were carried out in a spirit of amity. In late July the fertilizer companies filed the present bill seeking to enjoin the enforcement of the 1936 Amendment by the defendants.

X

The defendants charged with the enforcement of the 1936, as well as the other fertilizer laws, had not at the time of the filing of the bill issued rules and regulations interpreting and applying the 1936 Amendment. The fertilizer companies [fol. 215] were, therefore, without the benefit of the views of the administrative officials with respect to the actual application of the new Amendment to their businesses after August 1, 1936.

XI

The defendants being clearly State officers and the bill seeking injunction against the enforcement of the State statute on constitutional grounds, both State and Federal, the case was plainly one to which Section 380, Title 28 U. S. C. A. was appliable, and a Three Judge Court was duly convened for the hearing of the application for Interlocutory Injunction. Interim Order has been agreed to and signed, making the hearing on the application for Interlocutory Injunction a hearing on the final merits also, so that the case is now ripe for decision both as to the application for Interlocutory Injunction and for final decision on its merits.

Findings of Fact as to the Reasonableness of the Regulations Contained in the 1936 Amendment, and as to Its Relations to the Purpose of the Amendment.

I

Agriculture is the chief industry of the State of South Carolina and the industry from which the major portion of the

people throughout the entire State derive their livelihood. Since the days when the Indians placed a dead fish in each hill of corn, the use of artificial fertilizer to supply plant food to the crops of South Carolina has been a common practice. The use of what is known as commercial fertilizer; that is, fertilizer manufactured in large quantities and sold in the ordinary channels of trade to the farmers is recognized as a large and necessary adjunct to the agriculture of South Carolina.

II

Without going into extensive detail, it is a matter of common knowledge and well supported by the testimony in the instant case that the three major plant foods which can be conveyed by the carriers to the growing crop are phosporic acid (containing phosphorus, the ultimate element of value), ammonia or nitrates (containing nitrogen as the ultimate element of value) and potash (containing potassium as the ultimate element of value). The manufacturers have sought to get these needed plant foods from many different sources. Obviously if any one of the major plant food elements could only be obtained from one source the price of this source or material would be greatly increased and the resulting price of fertilizer to the consumer would finally become prohibitive. For example, the needed nitrogen can be obtained from many sources, the more common are nitrate of soda, a natural mineral product, cotton seed meal, tankage and various side products from packing houses and other manufacturers. In the last few years another common source of nitrogen has come into use and this is a very cheap source of the needed nitrogen. The material cyanamide is obtained by an electrolytic process from the air. The available nitrogen when obtained by electrolysis is absorbed by some common nitrogen carrier and thus made available for final use in the mixture of commercial fertilizer. The importance of knowledge with respect to the use of cyanamide is clearly seen when we consider the testimony of the witnesses with respect thereto.

III

There grew up a strong distrust of cyanamide as a source of nitrogen supply and this distrust, probably founded in misapprehension is common to the entire agriculture population of South Carolina. When first used in South Carolina cyanamide was not intelligently used in many cases and damage actually resulted from its use. As a result of experiments, the reason for this damage has been disclosed and the contention of the fertilizer companies now is that cyanamide when properly used as a source of nitrogen is never harmful but beneficial only.

IV

Observation and the sciences of botany, horticulture and agronomy agree with common sense in the conclusion that nitrogen obtained from the different sources does not always produce the same effect upon the growing crops. Extreme illustrations are cited, nitrate of soda containing 18 per cent nitrogen is a source which is rather expensive but is highly soluble and becomes almost immediately available as food supply to the growing plant; cotton seed meal is a common source of nitrogen supply and is relatively expensive due to the many other uses which this valuable produce has, contains on the average of 7 per cent of nitrogen. The nitrogen in this carrier, however, is not nearly so quickly soluble and falls into the classification of available non-soluble carrier of nitrogen. Manifestly, therefore, it is important to the farmer to know whether the 3 per cent nitrogen contained in his final mixture is derived from the use of a large quantity of the 7 per cent cotton seed meal or from the use of a small quantity of 18 per cent nitrate of soda. The law before the 1936 Amendment allowed the fertilizer company to merely use the generic terms nitrate soda or cotton seed meal, without revealing the poundage of each source as actually used in the mixture.

V

According to the testimony of the agronomists and to common sense, there are times when the intelligent farmer wishes

to have his ammonia which produces growth of the plant itself in a quickly available form. There are other times when he wishes to have the nitrogen supplied more tardily to the growing plant, accidents of weather and soil conditions control his decision. Simply to know that his 3 per cent of nitrogen comes from a combination of nitrate of soda and cotton seed meal is not sufficient to guide him in making the wisest decision (possible under the teachings of agronomists and experience) in determining what fertilizer to apply to a particular crop at a particular time.

VI

With the foregoing illustration of the application of the requirements of the new law to the actual facts of agriculture, we have no hesitation in finding as a fact that the requirements of the 1936 Amendment do most positively tend to meet an actually existing need and to serve the purpose which the Legislature clearly had in mind; namely, to so regulate the fertilizer business as to give the farmer that information which would tend to aid in the carrying on of the major industry of the State of South Carolina.

VII

The facts with reference to the major plant food of potash, containing the ultimate element potassium, as revealed both in the testimony of the scientists and the practical farmers supports our conclusion as to the tendency of the requirements to meet an existing need and to serve a stated purpose even more strongly.

VIII

Potash tends to prevent what is known in the agricultural world as "frenching." The testimony of the agronomists shows that if the plant is pushed by a large quantity of nitrogen and the nitrogen becomes exhausted or dry weather sets in the growing plant will wilt or turn brown around the edges. According to the testimony and common experience, it is abun-

dantly proven that potash is the element needed by the plant to prevent this frenching.

IX

So well known has been this use of potash that some sections of the State were thought to be unavailable for the growing of certain crops but it was found that the use of a small amount of German kainit on these lands removed the difficulty and they are now among the most productive cotton lands in the State. This truth has been derived as a result of experiments by the farmers themselves, experiments by Clemson College and the scientific studies carried on by the fertilizer companies themselves. The source from which potash is obtained has been found to make considerable difference in its practical effect upon the growing crops. There are sections of South Carolina where the soil is largely of the type popularly known as "black jacks," a type of soil with a considerable portion of gravel and brownish clay therein. It has been established by experience that no other form of potash is so beneficial to this type of soil as potash when brought to the plant in the form of German kainit.

X

During the war when the source of German kainit was cut off, many other sources of potash were resorted to to supply the needed potash in a very acceptable form to certain plants on certain soils, but for the "black jacks" section when used to produce cotton and corn, no other source of potash was found which was as beneficial as German kainit.

XI

Nitrate of soda, while primarily a nitrogen carrier, contains some potash and hence potash as revealed in the analysis of a mixed fertilizer may have come in some part from the nitrate of soda used primarily to supply nitrogen.

Likewise, cotton seed meal, a carrier used primarily for the supply of nitrogen contains some potash and hence may be in

part the source from which potash shown in the final mixture is partly derived.

XII

With reference to the supply of potash, abundantly sustained by the evidence, scientific and practical, this Court finds that the requirement of the law that the source of potash be revealed has a definite and practical tendency to meet an existing need on the part of the purchasers of mixed fertilizers and tends in a substantial way to carry out the purpose of the Legislature in passing the statute.

XIII

The above illustrations with respect to the nitrogen and potash carrier apply also, though perhaps in a less important way to the sources supplying phosphoric acid as a needed plant food element in mixed fertilizers.

XIV

Through many media the farmers of South Carolina are sufficiently informed as to the use of different plant food carriers to make intelligent use of the information required to be disclosed by the Open Formula Act. The farmers themselves have learned by experience. They have consulted with County Farm Agents and special Agents sent out by Clemson College as to the needs of their particular farms. They have numerous bulletins supplied to them dealing with the fertilizer experiments as carried on by Clemson College. They have observed the actual experiments themselves carried on in all sections of the State, and, therefore, carried on on all types of soil similar to the particular soils on which they are growing their particular crops.

XV

The major crops of the State, cotton, tobacco, corn, smaller grains and forage crops each have varying requirements as to the supply of major plant food elements.

XVI

To aid the farmers in the intelligent use of the information disclosed by the Open Formula Act the State and Federal Governments both have made soil maps and soil analyses. The farmer with a stated analysis of his own soil can make intelligent choice of the source from which he wishes to obtain the nitrogen to be used as a plant food for his growing crop. The same is true with respect to his choice of the sources from which the phosphoric acid and potash desired are to be obtained.

XVII

Soils are commonly known to be of acid or non-acid types. To counteract soil acidity dolomitic limestone is commonly used. Certain rare elements, especially magnesia, commonly carried in limestone has a very definite non-acid effect. This value of magnesia is well enough understood by many farmers to make its disclosure of definite advantage. In addition to supplying plant food the effect on the acid condition of the soil of serveral rare elements is of importance to the farmer.

Findings of Fact as to the Possibility of Supplying the Information Required by the Act in an Honest and Reasonably Accurate Manner, and Further Findings as to the Increased Cost of Manufacturing and Marketing which Will Result from Observance of the Requirements of the Act.

As introductory to this group of Findings of Fact, we call attention to the fact that the 1936 Amendment requires the information to be furnished "for each 100 pounds." We further point out that one of the main attacks made by the fertilizer companies is that an honest compliance with this provision of the statute will be practically a physical impossibility. They contend that any attempted compliance without keeping records prohibitive by reason of the volume requirement would be a plain subterfuge; that the result, therefore, would be that the information given by the disclosure would be so unreliable as to be of no value to the purchasers. The complainants contend that the only alternative to this is to

mix practically a separate physical mixing of every few tons and to keep elaborate records as to the materials put into each small pile of fertilizer. That the practical alternative of following this alternative would be to so enlarge the warehouses and manufacturing plants as to make the cost absolutely prohibitive. With this brief statement of the complainants' contentions on this phase of the case, we make the following findings of fact thereabout.

I

While the Clemson authorities charged with the enforcement of the Act have not published their rules and regulations pursuant thereto, the presumption is that such rules and regulations will be reasonable and will in spirit and tenor be in keeping with the regulations heretofore made by the same body in enforcing other statutes relating to the fertilizer business. The testimony abundantly sustains the conclusion that such a course has been followed in the past and justifies the prophecy that it will be continued.

II

The word "mixture" has under the testimony come to have a rather definite meaning in the fertilizer business. It relates not so much to the finished product in the sack as it does to the actual pile of fertilizer as mixed in the manufacturing plant and left to cure before being finally ground up and put into sacks. The testimony deals fully with the actual processes followed in the mixing of the fertilizer, and the greater weight of the testimony suggests that the average age unit of mixture as actually made by the larger fertilizer companies when making a typical fertilizer for sale in large quantities is about five thousand tons. Under the testimony we find that in some cases a strict compliance with the statute will probably call for a large warehouse and the inauguration of a more elaborate system of bookkeeping as to the exact materials put into each mixture but these increased expenses will not be so great as to render the cost of the manufacture of the finished

product prohibitive and out of line with the probable increase of prices which the actual trade would bear. See Note.*

III

Assuming that the Board charged with the enforcement of the 1936 Amendment and that the Supreme Court of South Carolina, having the final authority to construe the meaning of the terms used in the Amendment, will construe this phase of the statute in a reasonable way with the actual facts of the manufacture in mind, we find as a fact that under such construction the requirements of the statute do not put any unreasonable, arbitrary and baseless increase of costs of manufacture upon the fertilizer companies. We find further that honest compliance with the statute will probably result in the keeping of records for smaller mixtures of fertilizer than has been the practice heretofore; that such increased keeping of records will not be unreasonable, arbitrary and baseless.

IV

In connection with the foregoing finding of fact, we find that the actual practice of dumping the mixture of a small quantity called a batch on "the pile" is done in such a way as to result in the distribution of small quantities from each mixture in every direction on the pile. See in this connection the testimony of witness Garrity on page 140 of the typewritten record. The mixture falls upon a cone shaped pile rather than falling vertically into one corner of a rectangular container. The method as actually followed results in a practically uniform composition in every part of the resulting pile of fertilizer. The mixing thus distributes part of each small mixture throughout the entire pile, and each small mixture is not confined as a matter of actual practice to one corner of the resulting pile from which the final mixture is put into the sacks for sale.

* NOTE.—This Finding of Fact has a definite bearing upon a subsequent conclusion of law wherein we point out that this balance of increased costs against the resulting benefit is a question for the Legislature and not for the Courts.

V

The extra bookkeeping required by even the strictest compliance with the 1936 Amendment is nothing new in the fertilizer business. A well defined practice has been going on for years which requires this extra work and expense. Individual farmers, particularly the larger and more intelligent ones, have for years been calling upon the companies to manufacture for them a mixture according to a particular formula named by themselves. The purchasing farmer knowing his own land and believing that a particular mixture coming from a particular source will be most beneficial to his crops submits his formula to the company, the company then mixes up the mixture to meet the requirements of this particular purchaser.

So far as the effect of the 1936 Amendment on expenses and record keeping is concerned the result is simply to require the fertilizer companies to do for every purchaser what they have been doing for special purchasers for a number of years. The small extra charge for this extra service has been extremely moderate and there is no reason why the same small extra charge would not take care of the extra costs and expenses resulting from the following of this practice with respect to all of the fertilizer manufactured by a given company. The testimony shows that these costs range from 50¢ per ton to $2.50 per ton. Such compensation has actually offset the extra expenses and trouble in the past, and the only reasonable conclusion is that approximately the same extra charge will effect the increased costs and trouble in the future.

Findings of Fact as to the Meanings of the Technical Terms Used in the Statutes Involved in This Case

I

The testimony shows that certain technical terms have by actual use come to have rather definite meanings, and these meanings as listed below are the meanings which we find that the terms have so far as they are involved in this case.

Commercial Fertilizers.—A statutory definition of this term is given by Section 6372 of the Code of Laws of South Carolina, 1932.

Mixtures.—This word is used in two senses in the fertilizer trade. In the first place it is used to describe the fertilizer as it actually exists immediately after coming out of the mixing machinery and just before it is transported to the storage or curing piles. The other common use of the word, and that which we have used chiefly in our Findings of Fact, describes the fertilizer as it is finally prepared after curing and storing, and as it is actually poured into sacks for shipment and sale.

There was introduced in evidence a dictionary of fertilizer materials. This dictionary shows the commonly accepted meaning of all of the technical words used in the fertilizer trade. We are content with the definitions contained in this dictionary entitled "A Dictionary of Fertilizer Materials", copyrighted 1927, Ware Bros. Company, Philadelphia, compiled by H. C. Moore, Chicago, Illinois. With the exception, however of the word "Analysis" as it appears in the Amendment. This we think requires special definition and discussion by us and so we make a separate finding of fact as to this word.

Finding of Fact as to the Meaning of the Word Analysis as Used in the Amendment under Consideration Together with Supporting Discussion.

The section complained of reads as follows:

"'(b) That the amount and *analysis* of each material, or source, of each plant food element used in manufacture, of a fertilizer mixture containing two or more plant food elements be stated on a tag attached to each sack or container, such amounts of materials to be stated in pounds per hundred pounds of mixture contained in the sack or other container. This statement of pounds of material used in the manufacture, of a fertilizer mixture shall be in addition to the statement of chemical analysis as required by Section No. 6366 of the Code of Laws of South Carolina.'" (Italics ours.)

The construction of the word "analysis" as it appears therein is highly important in determin-g whether or not the enforcement of the statute can be carried out in a reasonable way. To construe the word analysis in a strict dictionary sense would be plainly inadequate. If the word analysis is given a technical construction and the science controlling the technical construction is that of analytical chemistry, we will then have the construction which the complainants contend will render the enforcement of the statute so difficult and visionary as to be wholly impractical. If this meaning of the word analysis is taken, then instead of one tag showing the analysis so far as the main facts are concerned, both the three major plant foods and the rare elements known to be of any value at all, we would have a sub-analysis showing the chemical formula for each of the carriers used in the manufacture of the particular fertilizer involved. This, we think, would be such an absurd result and put such additional burden upon the manufacturers, with no corresponding benefit to the purchasing farmers, as to be unreasonable. We refuse to adopt this meaning of the word "analysis" in our construction of the statute. The word "analysis" must be construed, we think, in the light of its use in the fertilizer business and in statutes governing the fertilizer business which are already on the books. We, therefore, have found as a fact that the analysis required in the sentence "That the amount and analysis of each material, or source, of each plant food element used in the manufacture of a fertilizer mixture * * *" means that the major carrier shall be given, the percentage per hundred pounds of this major carrier be given, and that the analysis of this major carrier, so far as it contains any of the well recognized plant food elements (major or minor, when important, common or rare in occurrence) be stated. For example, many of the major plant food carriers will contain a large percentage of carbon, an ultimate element, but neither the fertilizer company, the enforcing agency nor the purchasing farmer is interested in the amount of carbon contained in a major carrier used for the purpose of providing phosphoric acid, ammonia

or potash in a given mixture. For further example, one of the common sources of nitrogen is tankage, we do not understand that this law when reasonably interpreted would require the analysis from a chemical standpoint of the tankage and then a sub-analysis of every material which went into the tankage. This construction of the word analysis is extremely important in our consideration of the case; indeed were we not making such a construction of this word, our view of the whole case might be changed.

This finding of fact as to the meaning of the word analysis as here used is, we think, substantiated by well known principles of statutory construction with which we deal in detail in our opinion. This construction is further substantiated by the fact that in the closing words of the Section the information required is said to be in addition to the chemical analysis required by Section 6366 of the Act. Although the word "chemical" is there used the enforcing agencies, enforcing Section 6366, have only required analysis of the final mixture which shows the presence and percentage of the plant foods present. If such is the construction of the phrase "chemical analysis" as actually applied a fortiori, such a limited construction should be put upon the word "analysis" when used without the adjective "chemical". How can it be said that the Legislature meant to require more when they used the simple word analysis than the administrative agencies, charged with the enforcement of the previous Act, had understood them to mean when they used the stronger phrase chemical analysis? We have, therefore, found as a fact that the word "analysis" as used in the Amendment has this reasonable meaning and that compliance with such a reasonable construction will mean compliance with the Statute. This finding of fact is essential and well nigh controlling factor in our ultimate decision of the case as a whole.

We find that the word "analysis" as defined in the dictionary referred to above is as follows:

"The word 'analysis' as applied to fertilizer, shall designate the percentage composition of the product expressed in terms of nitrogen or ammonia, phosphoric acid and potash in their

various forms.' (Definition submitted by the Committee on Definitions of Terms and Interpretations of Results on Fertilizers accepted for final adoption by the A. O. A. C., October, 1926.)"

We think, however, that as used in this Statute there should be another sentence added as follows:

"The analysis shall also designate the source or sources of the nitrogen or ammonia, phosphoric acid and potash, and with respect to the ammonia shall give full information as to solubility or insolubility."

These foregoing elements constitute the meaning of the word "analysis" as we find it to be now understood in the South Carolina laws with reference to commercial fertilizers. The force and effect of the Amendment now under consideration is simply to add to this analysis a quantitive statement showing the relative proportion of the various sources which are mixed together to form the final mixture of fertilizer. For the purpose of such statement, the unit of one hundred pounds is named in the statute.

Additional Finding of Fact as to Super-Phosphates

Super-phosphate is a product resulting from a mixture of finely ground phosphate rock with sulphuric acid. Phosphate rock produced mainly in Florida is shipped to the factories, ground into a very fine powder and then treated with sulphuric acid. These treatments are usually made in one ton patches. These batches are then cured over a period varying from one to six months, the result is a highly uniform mixture containing acid in a highly available form. Super-phosphate in its final form contains 16% to 21% available phosphoric acid.

Meaning of the Word "Source"

So closely allied with and necessary to an understanding of the meaning of the word "analysis" is the meaning of the word "source" that it demands separate treatment. The dictionary as introduced in evidence does not define this important word and, therefore, we find it necessary to make

and declare our own definition of this word so important in this statute. Source as used in the statute means that substance which is used in the making of a fertilizer mixture in order to get into the final mixture one or more of the important plant food elements necessary to and desirable for the efficiency and suitability of the final mixture. For example, cotton seed meal is a composite substance (not a final chemical element) which contains in a definite and available way a certain amount of nitrogen. Cotton seed meal is, therefore, said to be and is one of the common sources of nitrogen content in commercial fertilizer.

Findings of Fact as to Trade Marks, Trade Names and Secret Formulæ

I

Introductory Statement.—Under the view which we take of the law applicable to this case, it is not necessary to a decision thereof to decide exactly what the legal status of the plaintiffs' title to trade marks, trade names of special brands or secret formulæ are. We have found in our Conclusions of Law that whatever rights the plaintiffs may have to these trade names, trade marks and secret formulæ, these rights are subordinate to and limited by the reasonable exercise of the police power of the sovereign State of South Carolina.

Nevertheless, we think in fairness to the plaintiffs it is proper to set forth our Findings of Fact with reference to this matter.

II

There has been a constant progress in the science of the fertilizer manufacture and use. Farmers with practical experience, agronomists, chemists, agricultural colleges and the Department of Agriculture have all made substantial contributions to this progress. Nevertheless, the fertilizer companies themselves have through experiments in cooperation with farmers, through chemical research and through the tabulation of results obtained from their own experiences,

contributed in a substantial way to this progress. As testified to in this case, many of the larger companies have spent many thousands of dollars in research and experiments. We find as a fact, therefore, that while the fertilizer companies, complainants herein, have not been responsible for all of the progress in the science of fertilizer manufacture and use, nevertheless, they have contributed thereto in a most substantial and definite way. But, we further find as a fact that they have also profited in a substantial and definite way from the revelations made by the various agencies referred to above.

III

Several of the complainants have developed particular brands of fertilizer to which trade names have been applied and these trade names, as the "Rainbow" brand, have been so well advertised and are so well known in the trade as to acquire substantial value. The substantial values of these trade names, if under direct scrutiny in a suit involving their existence and value would in all probability be found to be entitled to legal protection. But the legal existence of such trade names in such a suit and the exact nature and extent of the rights arising therefrom are questions which are not necessary to the decision of this case and, therefore, we make no further elaboration of the facts thereabout.

IV

The reputation for honest manufacture and quality of goods of several of the larger companies and many of the smaller companies has built up a trade of great value for each of these companies. As said above, the exact legal nature and value of these trade names are not questions necessary for the decision of this case and, therefore, are not further discussed.

V

Many of the plaintiff companies have kept secret the formulæ which they use in manufacturing their re-

spective brands of fertilizer. These formulæ have never been completely secret as revelation of some parts of the formulæ has already been compelled by existing statute and regulation. The 1936 Amendment complained of in this suit will compel further and material disclosure of parts of these secret formulæ. We have held in our conclusions of law that such compelled disclosure is a reasonable exercise of the police power of the sovereign State of South Carolina and, therefore, the rights of the plaintiffs to these secret formulæ are subordinate to and controlled by such exercise of the police power.

VI

We find that the rights of several of the plaintiff companies in and to these secret formulæ, to their trade names and to the trade marks with respect to several particular brands are definitely enough shown to amount to property rights under the laws of the State of South Carolina and of the United States. As we have repeatedly said, however, our views with reference to the exact nature and extent of these property rights are not necessary to the decision of this case, and we, therefore, do not elaborate our findings of fact with respect thereto.

APPENDIX D

Conclusions of Law

I

The plaintiffs are not entitled to the relief sought in their Bill and the whole matter having been heard and full testimony having been taken, arguments had and every factual showing and legal contention being fully considered, the defendants are entitled to have the Bill dismissed on its merits.

II

The plaintiffs are not entitled to the Interlocutory Injunction which they have applied for.

III

The plaintiffs are not entitled to the Permanent Injunction for which they have prayed in their prayer, but on the contrary the defendants are entitled to a Decree denying this Permanent Injunction on the merits of the case.

IV

This case has been heard by a Court of competent jurisdiction, sitting as a District Court of Three Judges convened under Section 380, Title 28 U. S. C. A., for the Western District of South Carolina. This Court has jurisdiction of the entire suit both as to parties and subject-matter.

V

The 1936 Amendment to the fertilizer laws of South Carolina, reading as follows:

"(b) That the amount and analysis of each material, or source, of each plant food element used in manufacture, of a fertilizer mixture containing two or more plant food elements be stated on a tag attached to each sack or container, such amounts of materials to be stated in pounds per hundred pounds of mixture contained in the sack or other container.

This statement of pounds of materials used in the manufacture of a fertilizer mixture shall be in addition to the statement of chemical analysis as required by Section 6366 of the Code of Laws of South Carolina, 1932" is within the police power of the State of South Carolina. It is a valid and reasonable exercise of such police power, and the force and effect of such Amendment tends in a reasonable way to effect the object sought to be accomplished by the Amendment.

VI

The rights of the plaintiffs herein to their respective trade names, trade marks and secret formulæ are all subject to, and subordinate to the control by the aforesaid valid and reasonable exercise of the police power of the State of South Carolina.

VII

The disclosures and revelations compelled by the Amendment are reasonably necessary for the accomplishment of the purpose sought to be accomplished by the Amendment and all reasonably tend to accomplish this purpose. The necessity for such disclosures as are compelled by the Amendment has a reasonable basis in the facts as we have found to exist. The balancing of the inconvenience and expense of such control against the benefits is primarily a question for the Legislature and not for this Court.

VIII

The Amendment, reasonably construed, as we find that it must be construed by the administrative agencies charged [fol. 233] with its enforcement is neither arbitrary, unreasonable nor capricious.

IX

The Amendment as reasonably construed by this Court and as this Court is compelled, under applicable principles of law, to presume that it will be construed and applied by the enforcing agencies is susceptible of being complied with in an honest and reasonably accurate manner. Such reasonable and

honest regulation and resulting compliance will not impose such an unreasonable expense or hardship upon the manufacturing and selling companies as to amount to unreasonable control as a matter of law.

X

The Amendment as reasonably construed by this Court and as this Court is compelled, under applicable principles of law, to presume that it will be construed and applied by the enforcing agencies is susceptible of being complied with in an honest and reasonably accurate manner and, therefore, does not amount to the taking of property of the complainants without due process of law and does not, therefore, violate the due process clause of the Fourteenth Amendment to the Constitution of the United States.

XI

This Amendment to the fertilizer laws of the State of South Carolina as reasonably construed by this Court and as this Court is compelled, under applicable principles of law, to presume that it will be construed and applied by the enforeing agencies is susceptible of being complied with in an honest and reasonably accurate manner and, therefore, violates none of the constitutional provisions of either the Constitution of the United State- or of the State of South Carolina, which have been relied on by the plaintiffs in their bill as rendering the aforesaid Amendment unconstitutional under *under* Federal and State Constitutions.